

Madison River Work Group Recommendations:

FWP Staff Assessment for Commission

The Madison River Work Group submitted its recommendations to the Fish and Wildlife Commission for managing commercial and non-commercial use on the Madison River, to be discussed at the June 22 commission Meeting. FWP reviewed the recommendations and is providing the commission with an assessment that considers whether the recommendations implementable and the resources that would be needed to implement them. FWP's role was to consider the legal, biological, technological, and fiscal implications of the recommendations. FWP did not edit the recommendations in any way other than to add numbering for formatting purposes.

I. Recommendations for Managing Commercial Use Madison River Work Group

June 1, 2022

The Madison River Work Group voted unanimously to present this set of Commercial Management Proposals to the Fish & Wildlife Commission. These proposals were developed over a series of four full Work Group meetings, nine Commercial Management Sub-Group meetings, and extensive exploration of various alternatives for regulating guided trips by river service providers 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 river service providers, regulatory agencies, and the local business communities to sustain healthy local economies; and
4. Provide the opportunity for new river service providers to operate on the Madison River and for existing providers to transfer all or portions of their permitted trip allowances as business conditions change.

Executive Summary of Recommendations. *(Please see March 21, 2022 Report for background discussion of issues and options.)*

1. **No change to joint FWP/BLM Special River Permit.** Maintain current Special River Permit ("SRP") system pursuant to 2007 Cooperative Management Agreement between FWP and BLM for governing access to Fishing Access Sites ("FAS's"), reporting annual usage, and collection of fees. No limitation on granting of new SRP's to new river service providers.
2. **New Montana River Use Permit.** Using existing authority under ARM 12.14.120 (Commercial Use Permit) and related ARM's, Fish and Wildlife Commission can authorize a new State of Montana Madison River Use Permit ("RUP") and related regulations to govern commercial river service providers' allocation system. A RUP may only be issued to a properly licensed SRP holder. *(NOTE: FWP may wish to consider alternative names for the allocation permit, such as "Madison Commercial Use Permit." Ideally the commercial allocation permit will be identified differently from any future non-commercial recreational floating permit system.)*

Proposed ARM edits to 12.11.6705: MADISON RIVER COMMERCIAL USE CAP ON GUIDED TRIPS

- 1) River service providers may only operate guided trips on the Madison River if they have a Madison River Special Recreation Permit and trips allocated to them as provided by these rules.
- 2) The total number of guided trips per individual service provider shall be initially set at the number of trips reported in 2019 or 2020, whichever is higher.
- 3) ARM 12.11.6705 will be implemented January 1, 2023.

4) The commission will review ARM 12.11.6705 in 2023 as prescribed by ARM 12.11.6711.

CURRENT VERSION: 12.11.6705 MADISON RIVER COMMERCIAL USE CAP

1) Fishing outfitters and guides may only operate on the Madison River as long as they have a Madison River Special Recreation Permit and trips allotted them as provided by these rules.

2) The total number of fishing outfitting and guided trips per individual outfitter and guide is capped at the number of trips reported in 2019 or 2020, whichever is higher.

3) ARM 12.11.6705 will be implemented January 1, 2023.

4) The commission will review ARM 12.11.6705 in 2023 as prescribed by ARM 12.11.6711.

Staff Assessment

Fisheries/Aquatic Resources	No anticipated impacts on the fishery from these recommendations but fisheries staff continues to evaluate how current conditions may be impacting the fishery, e.g., systemic stress, angling induced mortality. At this time, staff cannot say that the current level of use, or an increased level of use at a certain level, or type of use, will or will not impact the aquatic resources.
Recreation	Initial conversations with the BLM indicate that it would be possible to continue the joint FWP-BLM SRP system with procedural sideboards in place to ensure that the SRP is not tied to the transfer of trips. A more formal confirmation from the BLM would be needed at the appropriate time. FWP notes that referring to the permit as a River Use Permit might create confusion in distinguishing it from a Restricted Use Permit. This recommendation would add to the administrative workload considerably. Adding the “RUP” permit would double the number of Madison permits FWP administers annually (230 SRP + 230 RUP). Furthermore, if trips are transferred to new outfitters that are NOT current SRP permittees, the number of permits will increase further. In total, it is estimated that an additional 2-3 recreation staff FTE would be needed to administer the program as written.
Enforcement	Enforcement staff currently supplement river recreation ranger patrol efforts for commercial operations on the entire Madison River but is not the primary regulator of permitted use. Enforcement follows up on somewhere between 10-40 commercial violations referred by recreation rangers annually. This follow-up takes significant time and requires review of violation details, analysis of outfitter records, interviews with outfitters, guides, and clients, filing of court charging documents, authoring of investigative reports, and possibly providing court testimony. Enforcement’s largest challenge in the future would be maintaining this continued workload while also responding to increased strains on warden capacity from increases in other areas of responsibility.
Technology	This shouldn’t require additional development work from TSD if it is similar to the SRP that is already in ALS. Licensing is able to set up new permits. Currently outfitters complete an application and mail it into Region 2 for processing. The money for the permit is tracked through ALS. If something more complex is required for RUPs, there may be additional development work required. If the Outfitter application needs to be digitized, the development costs would be between \$20,000 – 40,000 depending on the complexity of the approval workflow.
Legal	No comments
Licensing	No comments

3. Use “Best of” 2019 or 2020 Trips. Implement ARM 12.11.605(2) limiting the total annual commercial RUP trips for each SRP holder at the number of trips reported for 2019 or 2020, whichever is higher. This should produce a total annual RUP trip allocation pool of approximately 16,200 trips. (NOTE: Preliminary reports show 2021 actual Madison SRP usage was approximately 18,000 trips – an increase of 4,000 trips over the highest historical usage in 2019 of approximately 14,000 trips.)

Staff Assessment	
Fisheries/Aquatic Resources	See notes above
Recreation	Assumption: Staff time would be needed to develop system for issuing and administering a permit system based on allocation of trips. See feedback on transferability.
Enforcement	Enforcement recommends that 2019 and 2020 trip use is verified through complete analysis of outfitter records by river recreation staff.
Technology	No comments
Legal	No comments
Licensing	No comments

4. Geographical Application of RUP. The RUP system and allocated trip limits will apply to all sections of the Madison River that are covered by the SRP system. 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.

Staff Assessment	
Fisheries/Aquatic Resources	See notes above
Recreation	No change to current permit administration.
Enforcement	No comments
Technology	No comments
Legal	No comments
Licensing	No comments

5. No Peak Season or Geographical Limits on RUP usage. There has been very extensive discussion and analysis of historical use patterns by season and by reach of the river, the implications of managing either seasonal or geographic limitations, the stated desire of many interested parties to have a fixed annual cap on commercial usage, and the desire of others to either limit potential Peak Season growth or to allow some level of growth in Off-Peak usage. Although not unanimous, the majority recommendation is to use Adaptive Management review to monitor any changes in use patterns and implement either geographical or seasonal use limits if usage changes significantly.

Staff Assessment	
Fisheries/Aquatic Resources	Depending on how it was implemented, seasonal or geographical use could have significant impacts on the aquatic resources. Increased use during spawning seasons (Spring or Summer) in areas of spawning or even increased use leading up to spawning or post-spawning could have significant impacts on the Fishery. The impacts could either be direct interference with spawning fish, reducing recruitment, direct impacts to redds (also reducing recruitment), or could be indirect by disturbance prior to spawning (reducing spawning success) or increase in stress levels post-spawning, which could impact adult survival levels. Without more specifics on how seasonal or geographical allocation would be implemented it’s hard to provide more specifics.

Recreation	If implemented, geographical/seasonal limits would likely increase the administrative burden by increasing the time required to process each report because of the need to track river use data and individual trip use for multiple sections instead of one.
Enforcement	Peak season for commercial fishing outfitting runs parallel to other peak seasons that strain enforcement staff's capacity, which limits staff's ability to effectively meet all department regulatory needs. Significant increases in warden staff would be required in the future to continue to effectively and successfully monitor commercial use as other recreational uses increase in the area surrounding the Madison River.
Technology	If geographical limitations are implemented, there would be a need to create maps (digital and printed) to designate the areas for geographical use.
Legal	No comments
Licensing	ALS would require establishment of peak-season exclusion (like Smith River)

6. Limited Appeals Process for Initial Allocation of RUP Trips. To address the potential of very unusual and extenuating circumstances that may have limited a river service provider's ability to conduct trips in 2019 or 2020, the Commission could:

- a. Appoint an Appeals Board (no SRP or RUP holders) or FWP Staff to collect any appeals and make recommendations to the Commission for Commission action.
- b. Appeals submitted by May 1, 2023, and final decisions no later than May 1, 2024. (NOTE: This appeals period could be adjusted depending upon timing for final approval of this proposal and the anticipated staff and commission schedules to handle any appeals.)
- c. Unique and extenuating circumstances must be shown, such as:
 - i. Major and persistent medical issues,
 - ii. Active military service,
 - iii. Significant and unforeseen family crisis,
 - iv. Other unforeseen and unanticipated factors that clearly demonstrate extenuating circumstances, unique to their situation.
- d. Appeals are limited to a request to have historic use from any portion of the 2016, 2017 or 2018 SRP reported trips to be considered in the allocation process.
- e. Require proof that the provider returned to levels of historical operation during either the 2021 or 2022 operations.
- f. The total number of additional trips that may be granted via appeals should be limited to no more than five hundred trips (approximately 3% of the initial RUP allocation). Prorated among appellants if the aggregate approved requests exceed the 3% limit.

Proposed new ARM: APPEALING FOR INCREASED TRIP ALLOCATION ON THE MADISON RIVER

- 1) A river service provider who held a Madison River SRP before January 1, 2019 may appeal to have historic use from any portion of the 2016, 2017, or 2018 considered in assigning the number of trips allocated to him/her.
- 2) The Fish and Wildlife commission review the extenuating and unique requests from river service providers. The Commission may choose to appoint an appeals board or the Department to review appeals and make recommendations to the Commission.
- 3) Appeals will only be considered if the following requirements are met:
 - a. Unusual and extenuating circumstances resulted in a temporary reduction of trips operated in the 2019 and /or 2020 seasons such as:
 - i. Major and persistent medical issues that affected the river service provider's ability to conduct trips.

- ii. Active military service by the river service provider during 2019 or 2020 that affected the permit holder’s ability to conduct trips.
 - iii. A significant and unforeseen family crisis that prevented the river service provider’s ability to conduct trips during 2019 or 2020.
 - iv. Other unforeseen and unanticipated factors that clearly demonstrate extenuating circumstances, unique to their situation, that may have affected the number of trips reported in 2019 and 2020.
- b. The circumstances must be temporary, and the service provider must demonstrate that they were able to return to their historic levels of operations during either 2021 or 2022.
 - c. The circumstances must be unique to their situation. Circumstances that universally applied to other river service providers will not be considered.
- 4) The appeal request must be submitted using the request form provided by the department along with any required supporting documentation no later than (May 1, 2023 – *Note the Department/Commission may choose to move this date earlier*). Requests received after this date will not be considered.
- 5) The Fish and Wildlife commission shall make its decisions based on the information provided in the request form and a recommendation from the department and the appeals board no later than (May 1, 2024). The Fish and Wildlife’s commission’s decision is final.
- 6) The total number of additional trips that may be granted collectively to all river service providers requesting special consideration must not be greater than 3% of the total number of trips initially allocated to all river service providers upon implementation of river use permits in 2023. If the aggregate of trips approved by the appeals process exceeds 3% then the number of trips granted through appeals will be prorated among successful applicants.

Staff Assessment

Fisheries/Aquatic Resources	Could be a concern if the appeals process leads to a significant increase in use.
Recreation	The administrative burden would increase for each additional permit that is added as a result of the appeals process.
Enforcement	No comments
Technology	Since this would be a one-time situation developing a digital application and appeal process would result in a negative ROI.
Legal	No comments
Licensing	No comments

7. Donation of Charitable Trips Exemption. Donations of trips to qualified charitable 501(c)3 organizations shall NOT be counted against a river service provider’s RUP allocation. Any donated trips should be reported separately, together with written documentation of the IRS 501(c)3 designation and confirmation that NO compensation was received by the river service provider for the donated trip. The maximum number of exempt annual trips for charitable donations for each river service provider shall be limited to a maximum of three (3) trips or three percent (3%) of the river service provider’s annual allocation determined at the beginning of the year, whichever is greater.

Proposed new ARM: EXCLUSION OF DONATED TRIPS FROM COMMERCIAL TRIP CAP

- 1) A limited number of trips donated to a 501(c)3 organization shall be exempt from the commercial use cap so long as:
- a. The river service provider presents documentation from the IRS approved 501(c)3 non-profit organization confirming that the donation and any consideration paid to the river service provider for the donated trip.
 - b. Zero payments are accepted for the donated trip(s).
 - c. The number of trips that an outfitter may donate to receive an exemption from their commercial use cap shall be 3 trips per year or 3% of their year ending trip cap whichever is greater. Any trips donated beyond this threshold shall be counted against their commercial trip cap.
 - d. All donated trips shall be logged and submitted in year end reports.

Staff Assessment	
Fisheries/Aquatic Resources	Depending on how this impacts level of use, it could lead to impacts.
Recreation	Tracking and verifying donated trips independent of for-profit trips would add a considerable administrative burden. Also, trips donated by outfitters are included in the trip totals for 2019-2020, so any donated trip exclusions would essentially add to the total number of allocated trips.
Enforcement	No comments
Technology	Assuming the current year-end reporting methodology is no longer acceptable, this would require a development effort that could be tied into the development of the transfer system. See below.
Legal	No comments
Licensing	No comments

8. Fluid Transferability of Allocated Trips. Flexible and convenient transferability of allocated trips (“Trips”) authorized under the RUP system, on a temporary or permanent basis, in whole or on a daily Trip basis, is a critical element of an effective and efficient limitation for commercial usage on the Madison River. Fluid transferability is consistent with recently passed legislation (SB275) now codified in MCA Section 37-47-310. An open, market-based transferability system will help to maximize the utilization of the authorized RUP Trips and, in turn, support the local economies, allow more realistic entry of new SRP holders onto the Madison at a reasonable cost, and facilitate the normal fluctuations among river service providers’ annual usage. Key items may include:

- a. All transfers must be recorded with FWP process (see example of NHCU online system).
- b. Allow temporary use transfers (limited to one calendar year usage).
- c. Allow permanent transfers.
- d. Transferee must be a SRP holder.

Proposed new ARM: TRANSFER OF ALLOCATED TRIPS ON THE MADISON RIVER

- 1) River service providers may transfer allocated trips to another qualified river service provider.
- 2) The transfer must be designated as permanent or temporary.
- 3) A temporary transfer expires at the end of the year in which it was transferred, and the allocated trips return to the original river service provider in the subsequent year.
- 4) The river service provider transferring trips must complete an allocated trip transfer form provided by the department that must stipulate the following:
 - a. Designate the qualified river service provider who will receive the transferred trips.
 - b. The date of the transfer request.
 - c. If the transfer is to be permanent or temporary.
 - d. Indicate the number of allocated trips being transferred that have not been conducted in the current operating year (transfer is immediate).
 - e. Indicate the number of allocated trips being transferred that have already been conducted in the current operating year (transfer occurs when the permit is renewed in the subsequent year).
- 5) Temporary trips may not be transferred.

Staff Assessment	
Fisheries/Aquatic Resources	No impacts
Recreation	Assumption: Additional staff would be needed to administer the permit system with transfer of trips, temporary and permanent. FWP estimates it would need 2-3 recreation staff FTE to administer the program as written (beyond what is needed to administer the current SRP).

Enforcement	No comments
Technology	Assumption: A system would need to be developed for online entry of data, e.g., temporary transfers, and technology to allow for “real-time” data entry and compliance checks. FWP does not have this capability currently and would need more time to determine the cost of adding this feature. There would also be the need to assess how this particular technology enhancement would fit into the department’s other priorities, with XMT consuming much of the existing IT capacity and resources. The NHCU system was developed for DLI by Accela and is integrated into their licensing and permitting system. DOA recently began providing technology support for DLI. They estimated a similar system could be built on ServiceNow, a workflow service that state is licensed for, for ~\$187,500 including internal staff time required for project management and testing.
Legal	No comments
Licensing	No comments

9. Use It or Lose It. Persistent non-use of RUP trips could have adverse impacts on the health of local economies, the ease of entry for new river service providers, and the flexible transfer of RUP’s among providers as business conditions change. The recommended provisions could include:

- a. If there is no usage for 3 consecutive years, complete forfeiture of RUP allocation.
- b. A river service provider must operate more than 50% of their season ending trip allocation over a three year period, or their allocated trip allocation will be reduced to their highest level of annual use over the same period.
- c. If a provider’s SRP or RUP has expired, then all associated allocated trips are forfeit.
- d. Forfeited Trips will be re-allocated to other river service providers through a lottery, with a preference for providers that have held a Madison SRP for two years or less.

Proposed new ARM: FORFEITING ALLOCATED TRIPS ON THE MADISON RIVER

- 1) A Madison River service provider will forfeit all or some of their allocated trips if one or more of the following occur:
 - a. If 0 trips are operated in 3 consecutive years, then their allocated trips will be forfeit.
 - b. If the cumulative number of trips operated over a 3-year period by a river service provider fails to exceed 50% of their maximum allocated trip potential in the same time period:
 - i. Their annual trip allocation will be reset to the highest number of trips operated annually during the 3 most recent years and the remainder of allocated trips will be forfeit.
 - ii. The maximum allocated trip potential in a 3-year period will be defined as the sum of the river service provider’s year ending allocated trip cap in each of the 3 most recent years.
 - iii. Any trips released by permanent or temporary transfer to another river service provider will be removed from their allocated trip cap before calculating the provider’s year end trip allocation.
 - c. If the river service provider fails to renew the required licenses and permits required to operate trips on the Madison River, then all trips allocated to them will be forfeit.

Proposed new ARM: USE OF TEMPORARY TRIPS ON THE MADISON RIVER

- 1) The department shall establish a pool of temporary trips that consists of forfeited trips.
- 2) River service providers that meet the qualifications to operate guided trips on the Madison River may apply for a maximum allocation of 25 temporary trips on an annual basis.
- 3) When allocating temporary trips, the department will give preference to new river service providers that are eligible to receive the required permits to operate on the Madison River, or who have held the required permits for less than 2 years.
- 4) If the cumulative number of temporary trips requested by applicants exceeds the number of temporary trips available in the pool, then the trips will be allocated to qualified applicants via lottery.

- 5) Temporary trips will be allocated to a river service provider for a maximum of 3 years.
- 6) Temporary trips may not be transferred.
- 7) If a river service provider has acquired standard trips through a transfer as governed by (ARM XXX), the temporary days will only be used once the standard allocation of trips has been exhausted.
- 8) After 3 years, the highest number of temporary trips operated in any of the three previous years will be converted to standard allocated trips and the remainder will be forfeit.

Staff Assessment

Fisheries/Aquatic Resources	No impact as long as this does not lead to an increase in use levels.
Recreation	“Use it or lose it” tracking and administering reallocation would increase the administrative workload, as would a temporary trip pool. BLM is the decision-maker for SRPs on BLM property.
Enforcement	No comments
Technology	Reporting would need to be included in the permitting system to track trips.
Legal	No comments
Licensing	No comments

10. Adaptive Management Reviews. The Madison River RUP system should be evaluated annually for the first three years and at least once every three years thereafter to determine if it is functioning as contemplated or if there are new conditions requiring modifications to the system. The review could be conducted by the Commission or a Work Group assigned by the Commission to make recommendations for possible Commission actions. Possible Guidelines for Adaptive Management Review could include:

- a. Coordination with any comprehensive Recreational River Management Plan for noncommercial usage.
- b. If actual annual commercial usage drops below 75% of total RUP allocated Trips, review:
 - i. Any impediments to ease of transferability of allocated Trips among SRP holders,
 - ii. Any modifications to “Use it or Lose it” requirements,
 - iii. Possible issuance of additional RUP allocated Trips to increase overall pool of available Trips,
 - iv. Any broad economic or environmental conditions affecting RUP usage.
- c. If actual usage becomes more condensed into the Peak Season or into certain periods on one or more sections of the Madison, review:
 - i. Potential for creating Peak Season limitations or Off-Peak Season changes,
 - ii. Potential for creating geographical limitations,
 - iii. Potential for specific FAS launch limitations by site, per day or week, etc.
- d. Review Charitable Trip exemption usage for effectiveness, abuse, or any adjustments, particularly if exempt trips exceed 300 per year.
- e. Review definition of a “Trip” if it becomes necessary to limit the number of guests per guide or otherwise more specifically define a “Trip”.
- f. Review usage patterns on Ennis Lake to determine if any commercial use regulations are necessary.
- g. Review ease of entry for new river service providers and any needed modifications to the RUP system.

Proposed ARM edits to 12.11.6711: REVIEW OF COMMERCIAL USE RULES FOR THE MADISON RIVER

- 1) The department shall provide an annual report on commercial guided trip use on the Madison River.
- 2) The commission, or a work group assigned by the commission, shall perform an adaptive management review of all ARM rules governing commercial use on the Madison following 2023, 2024 and 2025, and then every 3 years following to determine if they are functioning as contemplated or if there are new conditions requiring modifications to the existing ARM rules:
 - a. Ensure that ARM rules for both commercial and non-commercial recreation are coordinated.
 - b. If actual use of commercial guided trips drops below 75% of the aggregate allocated trips review:
 - i. Any impediments to the ease of transferability of allocated trips as prescribed by ARM (XXX).

- ii. Any modifications to the requirements to forfeit trips as prescribed by ARM (XXX).
- iii. Consider issuing additional allocated trips as prescribed by ARM 12.11.6705.
- c. If actual use of commercial guided trips becomes more condensed in the Peak Season between June 15 and September 30th, or into other periods on or more sections of the Madison River, review:
 - i. Potential for creating Peak Season limitations or Off-Peak Season changes,
 - ii. Potential for creating geographical limitations,
 - iii. Potential for specific FAS launch limitations by site, per day or week, etc.
- d. Review Charitable exemption usage as prescribed in ARM (XXX) for effectiveness, abuse or any adjustments; particularly if the aggregate number of donated trips receiving exemptions by all river service providers exceeds 300 per year.
- e. Review definition of a “Trip” if it becomes necessary to limit the number of guests per guide or otherwise more specifically define a “Trip”.
- f. Review usage patterns on Ennis Lake to determine if any commercial use regulations are necessary.
- g. Review ease of entry for new river service providers and any needed ARM rule modifications.

Staff Assessment	
Fisheries/Aquatic Resources	Significant concerns if the review leads to a seasonal or geographic allocation depending on how those would be allocated.
Recreation	Additional resources might be needed if the rule review leads to an expansion of the program.
Enforcement	Enforcement encourages regular review of effectiveness of implemented river recreational rules and their impacts to FWP’s limited capacity to administer, manage and enforce these rules.
Technology	Assessment measure for geographic limitations may need geospatial data creation as well as product development. The river sections outlined will need to be delineated, and there will be a need for both internal and public mapping products to be produced. Internally for analysis, status reporting and possibly other needs. Public products will be needed for river user permittees to know which section of river they want a permit for, restriction mapping, signage and orientation maps. Reporting will also be used by the public. There looks to be about 10 different sections of river to delineate, and specific mapping product needs are unknown therefore cost and resource estimates are a challenge. For reference purposes the Lower Yellowstone River guide used 200+ hours of GDS staff time for planning, communication mapping and review. Depending on if/when this work is needed there could be GDS staff capacity issues. At the current rate for augmented staff, mapping work could run ~\$30,000.
Legal	No comments
Licensing	ALS requires update if changes in quota.

11. Enforcement Mechanisms. Enforcement should be via existing Commission regulations and enforcement mechanisms for compliance with all applicable SRP and RUP requirements.

Staff Assessment	
Fisheries/Aquatic Resources	No comments
Recreation	No change to current permit administration.
Enforcement	A clear definition of what is a criminal violation and what is a civil violation of river recreational rules is needed. Most violations of the SRP do not rise to the level requiring criminal prosecution through the local Justice of the Peace. Specific guidance or parameters should be constructed that guide

	department river recreation managers on how to manage, respond to, and regulate SRP usage or violations of passed rule in a civil manner. This would require the development, staffing, implementation, and administration of a civil violation process. Only serious violations with criminal intent should be referred to FWP enforcement staff.
Technology	No comments
Legal	No comments
Licensing	No comments

Madison River Working Group

Opportunities for New Entry for River Service Providers Providing Guided Trips

June 1, 2022

Providing opportunities for new river service providers to operate commercial trips on a river when use is limited is a challenge. Our goal on the Madison River is to develop a realistic pathway for new entrants under a commercial use plan that caps the number of guided trips.

Objectives:

1. Provide realistic new entry pathways for river service providers to operate on the Madison River.
2. Ensure that new entry remains possible while the aggregate number of commercially guided trips remains capped.
3. Ensure that existing service providers may continue to operate at their recent historic use so long as they maintain a minimum threshold of use.
4. Ensure that mechanisms are in place to allow unused trip capacity to transfer to new entrants as well as smaller operators attempting to expand.

Obstacles to New Entry in Existing Commercial Use Plans

Several other rivers in Montana have set limitations on commercial use including the Bighole, Beaverhead, West Fork of the Bitterroot, and Smith Rivers. New entry and incremental growth has become very difficult on these rivers for several reasons.

1. **Moratoriums on new permits** – most commercial use permit systems in Montana where limitations on use are present implement a moratorium on new permits. The permit then becomes the required “ticket to entry”. The only option for a new entrant is to purchase another business so that they are issued their own permit when the seller relinquishes theirs – often at a significant valuation beyond the actual operations of the selling outfitter. Often no businesses with a permit are for sale, and if they are the entry cost is significant. This system is similar to the “liquor license” model.
2. **Minimal performance requirements** – Businesses ebb and flow and many decline in use over time. Many permit systems with allocated trips in Montana have minimal requirements for maintaining historic levels of operation. When these businesses decline in use they are not required to forfeit use capacities to other providers unless they discontinue operations completely.
3. **Inability to transfer use capacity in small increments** – Most existing commercial use permits in Montana require a service provider to sell their operations in their entirety in order for allocated trips to transfer. So operators declining in use have no mechanism to transfer use to another outfitter. This lack of fluid transfer of use capacity is a barrier for new entrants.

Recommendations to improve new entry on the Madison River

1. **Avoid moratorium on permittees** – any qualified outfitter or service provider should be able to receive a use permit. This strips away artificial valuation of a “limited entry permit” and avoids the “liquor license” effect.

Staff Assessment	
Fisheries/Aquatic Resources	If new entry leads to a significant increase in use it might lead to aquatic resource impacts.
Recreation	No comments
Enforcement	No comments
Technology	No comments
Legal	No comments
Licensing	No comments

II. Recommendations for Managing Non-Commercial Use

<p>OBJECTIVES:</p> <ol style="list-style-type: none"> 1. Preserve the quality or recreation on the Madison River. 2. Protect resources, both physical and biological, from the threats of unregulated growth of recreation on the river. 3. Collect recreational user count data in several reaches of the river. 4. Introduce tools that may aid in future recreation management. 5. Commit to developing a comprehensive Madison River Recreation Plan. <p>SUMMARY OF RECOMMENDATIONS TO FISH AND WILDLIFE COMMISSION:</p> <ol style="list-style-type: none"> 1. Increase passive data collection to build baseline data that incorporates counts of wade angling use and floating use in specific reaches of the river. 2. Require a Madison River Float Permit for floating recreation to gather use data and to serve as a possible tool for river recreation management in the future. 3. Develop a comprehensive Madison River Recreation Plan that addresses all forms of recreation. <p>1) INITIATE A PASSIVE MONITORING RIVER USE DATA COLLECTION SYSTEM SUMMARY: It is recommended that passive data collection methods be implemented for counting river users that can result in a daily average level of use at different times of the year. This benchmark data will aid in developing and implementing a comprehensive Madison River Recreation Plan. Benchmark river use data will also be needed in future adaptive management of a river recreation plan.</p> <p>RECOMMENDATIONS:</p> <ol style="list-style-type: none"> 1. Initiate a passive data collection system that provides benchmark data on wade angling user counts in the reaches where float angling is restricted. 2. Initiate a passive data collection system that provides ongoing benchmark data on floating recreation user counts in multiple locations along the river. 	
Staff Assessment	
Fisheries/Aquatic Resources	Recommend reviewing the details in the report provided by fisheries on the use data gathering that was conducted in 2021; the report provides details on how best to gather use data on the river.
Recreation	Any significant on-river passive monitoring would require additional staff.
Enforcement	No comments
Technology	Depending on the collection methods for passive monitoring, may require a Vessel Traffic Service which could include radar, sensors, and/or CCTV. The results would then need to be mapped by TSD. Some rivers require commercial boats to be equipped with GPS tracking devices to allow for automatic monitoring of commercial river traffic monitoring.
Legal	No comments
Licensing	No comments

2) REQUIRE A NON-COMMERCIAL MADISON RIVER FLOAT PERMIT SUMMARY: The increased growth of recreation on the Madison River has raised concerns related to social crowding and the potential for degradation of the resource. A Madison River Float Permit shall be required daily for river users that plan to float the Madison River to aid in collecting data on river use and to provide a tool for future recreation management options.

RECOMMENDATIONS:

1. A Madison River Float Permit will be issued daily for all non-commercial groups that float the Madison River beginning in 2023.
2. A Madison River Float permit is required when floating between the Yellowstone Park boundary to Ennis Lake or from Warm Springs Day Use Area to the Jefferson River confluence.
3. Madison River Float Permits may be reserved digitally or in person at license providers.
4. The permit must designate the number of participants in the float party up to a maximum of 20 individuals per Permit.
5. The permit must designate the date of recreation. If a user plans to float on consecutive days, up to three daily Permits may be secured in one reservation session.
6. One person must be named as trip leader. The trip leader may designate one alternate trip leader. The trip leader or alternate leader as named on the Permit must be present for the entire duration of the float.
7. Any individual that utilizes the commercial services of a Madison River SRP holder is exempt from obtaining a non-commercial Madison River Float Permit since their use will be recorded and reported on their behalf by the commercial service provider.
8. A small reservation fee is recommended to offset costs of a reservation system and to ensure quality of data collected through the daily permit system.

Staff Assessment

Fisheries/Aquatic Resources	No comments
Recreation	Compiling the data would increase the workload.
Enforcement	Effective enforcement of a newly required non-commercial daily float permit would require significant resources from FWP warden staff – resources that are already stretched thin with enforcement duties in other designated recreation sites, enforcement duties on other rivers and waterbodies, urban wildlife conflict response, etc. Data from the 2021 Missouri-Madison Recreation Visitor Use Counts report estimates over 440,000 vehicles entered the (33) Madison River federal and state boat launch sites in 2020 (not including reservoir locations). The permit would be required 365 days a year and would be a new requirement for a large portion of river users. For year-round coverage of all launch sites for a minimum of 8 hours a day, over 60 wardens would be needed. At a minimum, warden staffing levels would have to double from (5) to (10) wardens on the Madison River to effectively regulate permitted use. Currently, 5 wardens are assigned portions of the Madison River within their, on average, 1800 square mile patrol district. These wardens are responsible for a wide variety of duties year-round with river recreation only being a small portion. Increased presence would be necessary with such a large change in river recreation regulation. Staff would need to be detailed away from other areas of responsibility or staffing level would need to increase significantly. The permit requirement would also increase workloads on TIPMONT staff and communications center dispatchers when violations are reported, administrative staff who sell licenses and answer calls, County Attorneys who prosecute violations, and Justice courts who process such prosecutions.
Technology	This shouldn't require additional development work from TSD. Licensing is able to set up new permits.
Legal	No comments

Licensing	ALS set-up required for date range, party rules and exclusion perimeters.
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3) DEVELOP A MADISON RIVER RECREATION MANAGEMENT PLAN SUMMARY: The increased growth of recreation on the Madison River has raised concerns related to social crowding and the potential for degradation of the resource. A comprehensive river recreation management plan will be developed to address all recreational use on the river.

RECOMMENDATIONS:

1. After 2 years of implementation of the Madison River Float Permit system and expanded passive monitoring, a Madison River Recreation Management Plan will be developed which shall define acceptable levels of recreational use on the river and define a range of management options that protect the future quality of recreation on the river prescribed by ARM 12.11.405, ARM 12.11.415, ARM 12.11.420, ARM 12.11.425, ARM 12.11.430, ARM 12.11.435 and as described by the Montana River Recreation Management Planning Manual.

Staff Assessment	
Fisheries/Aquatic Resources	Suggestion would be to include an evaluation of how the recreation management plan may impact the aquatic resources of the Madison. It could also look at any potential impacts on other rivers, e.g., would the Madison River Management Plan displace more anglers onto other rivers.
Recreation	Drafting the document would increase the administrative workload.
Enforcement	No comments
Technology	No comments
Legal	No comments
Licensing	No comments

RECOMMENDATIONS TO THE DEPARTMENT: REQUESTED DETAILS TO BE COLLECTED FROM ENHANCED RIVER USE DATA COLLECTION

SUMMARY: There is a need for a better understanding of all recreation use levels on the Madison River. This data will aid in establishing acceptable levels of use in a Madison River Recreation Plan and will aid in adaptive management in the future.

PASSIVE RIVER COUNT DATA COLLECTION RECOMMENDATIONS:

1. It is recommended that that the Department consider floats be scheduled through wade angling zones to actively count the number of wading anglers in the following reaches.
 - a. Between Hebgen Lake and Quake Lake
 - b. Between Raynolds Pass and Pine Butte
 - c. Between Ennis FAS and Valley Garden FAS
2. It is recommended that the Department consider establishing a floating recreation count system to actively count the number of rivercraft (and floaters) in the following reaches:
 - a. Between Raynolds Pass and Pine Butte
 - b. Between Lyons Bridge and Windy Point
 - c. Between McAtee Bridge and Story Ditch
 - d. Between Varney Bridge and 8 mile FAS
 - e. Between Ennis FAS and Valley Garden
 - f. Between California Corner and Cannaday
 - g. Between Blacks Ford and Greycliff FAS
 - h. Between Greycliff FAS and Cobblestone FAS
 - i. Between Blackbird FAS and the confluence of the Jefferson River

MADISON RIVER FLOAT PERMIT RECOMMENDATIONS:

1. Additional survey questions should be requested on Madison River Float Permit reservations to gather data on float recreation:
 - a. For each day if the float party intends to float between Yellowstone Park and Ennis Lake or from Warm Springs Day Use Area to the Confluence of the Jefferson River
 - b. How many Rivercraft the party intends to use each day
 - c. How many of the float party intend to fish each day

ON RIVER DATA COLLECTION DURING USER CHECKS:

1. Compliance rates for floating parties should be tracked during Madison River Float Permit compliance checks (what percentage of groups engaging in float recreation have secured the Madison River Float Permit).

Staff Assessment	
Fisheries/Aquatic Resources	Recommend looking at the report provided by fisheries, see above. The report was provided to POR and the Madison Work Group early in 2022.
Recreation	Consistently conducting the counts or for float permit compliance as described would require additional staff.
Enforcement	No comments
Technology	The permits shouldn't require additional development work from TSD. Licensing is able to set up new permits. Additional survey questions could be implemented into the Harvest Survey system and made available online through MyFWP. This would require additional development work from TSD.
Legal	No comments
Licensing	No comments

4) DEVELOP A MADISON RIVER RECREATION MANAGEMENT PLAN SUMMARY: The increased growth of recreation on the Madison River has raised concerns related to social crowding and the potential for degradation of the resource. A comprehensive river recreation management plan will be developed to address all recreational use on the river.

RECOMMENDATIONS:

1. After 2 years of implementation of the Madison River Float Permit system and expanded passive monitoring, a Madison River Recreation Management Plan will be developed which shall define acceptable levels of recreational use on the river and define a range of management options that protect the future quality of recreation on the river prescribed by ARM 12.11.405, ARM 12.11.415, ARM 12.11.420, ARM 12.11.425, ARM 12.11.430, ARM 12.11.435 and as described by the Montana River Recreation Management Planning Manual.

Staff Assessment

Fisheries/Aquatic Resources	See comments above on Recreation Management Plan.
Recreation	Drafting the document would increase the administrative workload.
Enforcement	No comments
Technology	No comments
Legal	No comments
Licensing	No comments

RECOMMENDATIONS TO THE DEPARTMENT: REQUESTED DETAILS TO BE COLLECTED FROM ENHANCED RIVER USE MADISON RIVER RECREATION RECOMMENDATION ON VESSEL REQUIREMENTS FOR THE UPPER RIVER

MADISON RIVER WORK GROUP APPROVED RECOMMENDATIONS 5-27-22

SUMMARY: The increased growth of recreation on the Madison River has raised concerns related to social conflicts on the river. It is recommended that floating between Yellowstone Park and Ennis Lake be restricted to vessels with an adequate means of propulsion to aid in avoiding conflicts with wading anglers and other floaters.

OBJECTIVES:

1. Reduce social conflicts that arise between float users and wading anglers or other floating parties.

RECOMMENDATIONS:

1. Floating recreation on the Madison River between Yellowstone National Park and Eight Mile Ford FAS and between Valley Garden FAS and Ennis Lake are required to use a Vessel as defined by MCA 23-2-502 and ARM 12.11.30 that is equipped with adequate propulsion to aid in avoiding conflicts with other river users. Allowable Vessels include any Vessel under mechanical power or Vessels designed for paddle or oar powered propulsion including row boats, inflatable pontoons or rafts equipped with oars, paddle boards and rafts with oars or equipped with paddles. Innertubes, air mattresses, and float tubes (belly boats) are restricted.

DEFINITIONS:

1. **MCA 23-2-502: "Vessel"** means every description of watercraft, unless otherwise defined by the department, other than a seaplane on the water, used or capable of being used as a means of transportation on water.

Staff Assessment	
Fisheries/Aquatic Resources	Unknown. However, during the PKD outbreak on the Yellowstone River, floating was also restricted in addition to angling due to concerns related to increased stress on the fish. With the concentration of floating vessels into the one area this could lead to impacts if it increases significantly over current use levels. Another concern is perhaps removing fishing opportunities from these areas due to an increase in floating non-angling activity.
Recreation	Additional FTE would be needed to conduct river patrols for compliance with the rule.
Enforcement	No comments
Technology	No comments
Legal	No comments
Licensing	ALS updates for vessel pass perimeters.

<p>MADISON RIVER COMMERCIAL WATERCRAFT RENTAL DELIVERY PERMIT</p> <p>SUMMARY: There are currently a small number of businesses that support river float parties by providing unguided rivercraft rentals and shuttle services at launch sites along the river. Watercraft Rental Delivery services providers currently operated under a shuttle SRP (Special Recreation Permit). It is recommended that another category of SRP be issued specifically for Watercraft Rental Delivery businesses along with modified reporting requirements.</p> <p>OBJECTIVES:</p> <ol style="list-style-type: none"> 1. Gather better data on floating recreation on the Madison River. 2. Provide a tool that may be used to guide future recreational use as part of a comprehensive Madison River Recreation Plan. <p>DEFINITIONS:</p> <ol style="list-style-type: none"> 1. Watercraft – every description of floatation device that a river user may utilize when floating (whether the body is partially submersed or fully above the water) including all Vessels, as well as well as other floatation devices such as innertubes, float tubes (belly boats), and air mattresses. Wearable floating devices such as PFDs (personal floating devices including life jackets) are not considered to be Watercraft. 2. High Density Zone – the reach of the Madison River between Warm Springs Day Use Area and Greycliff FAS. <p>RECOMMENDATIONS:</p> <ol style="list-style-type: none"> 1. A Watercraft Rental Delivery commercial permit shall be required for businesses that deliver rental Watercraft to launch locations along with river, along with their shuttle services, beginning in 2023. 2. Watercraft delivered to the river by the permit holder must display the service providers permit number (or name) to be distinguishable as a Watercraft rented from an authorized Watercraft Delivery Service. 3. Watercraft Rental Delivery service providers must record the number of river users that are launched per day along with the launch and take out locations and provide these logs in an annual report to the Department. 4. Businesses that rent Watercraft to users at other locations other than at a launch location on the river, where those Watercraft are transported to and from the river by the person(s) recreating on the river, are not required to obtain a Watercraft Rental Delivery SRP.
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5. River users renting Watercraft from other rental companies at locations distant from the river must obtain non-commercial Madison River Float Permit in the same way they would obtain a permit if they were launching a privately owned Watercraft.

6. The Operations of Watercraft Rental Delivery Service Providers Shall Be Restricted to the High Density Zone between Warm Springs Day Use Area and Greycliff FAS

Staff Assessment

Fisheries/Aquatic Resources	No comments
Recreation	Additional FTE would be needed to administer the permit system.
Enforcement	No comments
Technology	Data collected as a part of this permit may require additional development work by TSD.
Legal	No comments
Licensing	No comments

**NON-COMMERCIAL BEAR TRAP CANYON FLOAT PERMIT RECOMMENDATION TO THE BLM
MADISON RIVER WORK GROUP APPROVED RECOMMENDATIONS 5-27-22**

SUMMARY: The number of parties floating through the Bear Trap Wilderness regularly exceeds the 6 parties per day defined by the BLM in their Limits of Acceptable Change. The limited launch area can also result in congestion and social conflict when multiple float parties arrive simultaneously. A Bear Trap Canyon Floater Permit is recommended for non-commercial users to gather better data on use and to help space out the launch times of different floating parties.

OBJECTIVES:

1. Gather better data on floating recreation in the Bear Trap Canyon Wilderness Area
2. Encourage floating parties to spread out launches throughout the day to ease congestion
3. Protect resources, both physical and biological, from the threats of unregulated growth of floating recreation in the Wilderness Area.

RECOMMENDATIONS:

1. A Bear Trap Canyon Wilderness Float Permit should be required year-round for all non-commercial groups that float the Wilderness reach of the Madison River beginning in 2023.
2. Launch times will be established to avoid congestion at the boat launch:
 - a. Each float party will be assigned a 1 hour launch window
 - b. 1 launch window will begin every 30 minutes starting at 6am and ending at 4pm (example 6am-7am; 6:30am-7:30am, etc). Any float party with a permit may choose to launch before 6am or after 4pm as an alternative to their assigned launch window. 4 of the 21 launch time windows will be blacked out for the Commercial River Service Providers.
 - c. Float parties shall be limited to a maximum of 16 people
3. One person must be named as trip leader. The trip leader may designate one alternate trip leader. The trip leader or alternate leader as named on the Permit must be present for the entire duration of the float and each day issued on the Permit.

4. After 2 years of implementation of the Bear Trap Wilderness Float Permit system, review launch data to determine if further management actions including a limit on the number of float parties per day should be implemented.

5. Cooperation between Montana FWP and the BLM is encouraged to determine if a cooperative management agreement that includes the Wilderness area should be established as part of comprehensive Madison River Recreation Plan

Staff Assessment

Fisheries/Aquatic Resources	Recommendations will be provided to BLM. No FWP input at this time.
Recreation	
Region (Enforcement)	
Region (Recreation)	
Technology	
Legal	
Licensing	