

BEFORE THE DEPARTMENT OF FISH, WILDLIFE & PARKS  
OF THE STATE OF MONTANA

In the matter of the adoption of New ) RULEMAKING PETITION  
Rules pertaining to managing )  
commercial use on the Madison River )  
)

TO: All Concerned Persons

1. Petitioner's name and address is Michael A. Bias, Ph.D., Executive Director, Fishing Outfitters Association of Montana, PO Box 485, Twin Bridges, MT 59754.

2. The Fishing Outfitters Association of Montana (FOAM), having over 300 outfitter members and over 500 guide members statewide, represents nearly all the fishing outfitters and the majority of guides across Montana. FOAM also represents over 75% of all 203 Madison River Special Recreation Permit (SRP) holders. FOAM has had a seat at the table in formulating a Madison River recreation management plan since the first inception of the Madison River Citizens Advisory Committee starting in 2011. FOAM has also had a seat on the recently disbanded Madison River Negotiated Rulemaking Committee (NRC). Since then, Fish, Wildlife & Parks (FWP) has been trying to gain formal approval of a Madison River Recreation Plan. To date, no plan has received widespread public support or been approved by the Fish and Wildlife Commission (Commission). Commercial outfitters conducted 11,224 trips on the Madison River during 2017 (FWP data). Nonresident visitors to Madison County expended over an estimated \$23.5 million on outfitter and guide services during 2017 (ITTR data). Any consideration of a Madison River recreation management plan could affect outfitting in Montana and our members' livelihood's and well-being.

3. Since the Commission's denial of Fish, Wildlife & Parks' April 2018 Madison River Recreation Management Environmental Assessment (EA), following the disbanding of the Madison River NRC in May 2019, during the June and August 2019 Commission meetings, and the denial by the Commission of FOAM's November 2019 petition for commercial use management on the Madison River, the Commission and FWP had not presented any proposal for a Madison River recreation management plan. During early 2019, in an effort to address commercial use on the Madison River, FOAM held 9 meetings with Madison River SRP holders, guides, and outfitters to discuss potential management options. From 9 days of NRC meetings during 2019 and 9 FOAM meetings, and during the year following the disbanding of the NRC, FOAM has compiled recommendations for plan that will help manage commercial use at 2019 levels while maintaining an avenue of entry for new outfitters and ease of transferability of Special Recreation Permits (SRPs) on the Madison River. FOAM's surveys and incorporation of comments from members into this June 2020 *Madison River Commercial Use Management Plan* represents the

majority of commercial use support for these recommendations as part of an adaptive Madison River recreation management plan.

## **ADOPTION:**

### **NEW RULE I: Overall River Use**

Current fishing regulations in the two walk/wade sections – the outlet of Quake Lake to Lyons Bridge FAS and Ennis FAS to Ennis Lake - of the Madison River prohibit fishing from boats or vessels. Revising current fishing access and floating regulations in the walk/wade sections of the Madison River will increase dispersal of recreational use, which reduces crowding across all sections of the Madison River.

- Quake Lake to Lyons Bridge FAS: remove the existing walk/wade reach of the Madison River from Raynolds Pass FAS to Lyons Bridge FAS during Sunday, Monday, Tuesday, and Wednesday, effectively allowing fishing from a boat or vessel within this reach 4-days per week. A regulation change would apply for the entire year.
- Quantitatively evaluate the effectiveness of allowing fishing from a boat or vessel for 4-days per week within this reach. If this adapted regulation proves to be effective, it could be permanently adopted or altered to include additional days.
- Ennis Bridge to Ennis Lake: Walk/Wade Access with Vessel; Status Quo

### **NEW RULE II: Commercial Use Management**

From 2012 through 2019, the upper Madison River has seen a steep increase in use, doubling from 88,000 to an estimated 249,000 angler days. Estimates for angler use during 2017 were 207,000 angler days and were obtained from FWP. Outfitted angler days during 2016 and 2017 on the Upper Madison River was 20,018 and 19,662, respectively.

The Lower Madison River extends from the outlet of Ennis Lake to the beginning of the Jefferson River. Recreational use numbers on only the lower Madison River were estimated at 750,000 user days during 2017. Outfitted angler days during 2016 and 2017 on the Lower Madison River was 2,284 and 2,724, respectively.

Though overall angler and recreational use on the Madison River has increased substantially over the last 5 years, managing commercial use is a first step to managing overall crowding on the Madison River. Our commercial use management plan contains the following facets:

- This plan manages the total number of outfitted trips based on recent historical use during the 2019 or 2020 season. SRP holders with a valid Madison River SRP Permit prior to 15 June 2020 will be allocated outfitted

trips. This plan allows for a buffer and trip flexibility for permit holders through the use of *Flex Trips*.

- An SRP holder will be assigned a number of Guided Trips that they may operate in a season equal to their historic use of Trips in the 2019 or 2020 season, provided they held a valid Madison River SRP Permit prior to 15 June 2020.
- An SRP holder with extenuating circumstances that resulted in a temporary reduction in their normal use of Guided Trips in the 2019 or 2020 season may petition to use their previous historic use to establish their Guided Trip allocation (examples: military service, injury, illness, etc.).
- SRP holder may access up to 10 additional *Flex Trips* annually 2 out of every 3 years.
- If use is 0, SRP holder will not receive historic use allocation nor the *Flex Trip* ability to operate.
- Guided Trips from the SRP Trip Distribution Pool will be distributed to qualified SRP applicants.
- If total Trips (Guided Trips plus *Flex Trips*) exceed the permitted use allowance, the SRP holder will be subject to disciplinary action or loss of permit. If exceeding trip allowance is habitual, the SRP holder risks losing their permit.
- This Commercial Use Management Plan will not incorporate or endorse any form of rest-and-rotation schedules until such time following the 3<sup>rd</sup> year evaluation plan (see below) that a quantitative analysis of overall recreational use on the river is evaluated and those management options are suggested.

### RULE III. *Flex Trips*

There is a need for *Flex Trips* on the Madison River for use by outfitters whose historic trip use has fluctuated greatly from year to year. Outfitters occasionally need to use the Madison fishery when other fisheries they historically use are closed or not performing due to circumstances not of their control.

- SRP Holders may use *Flex Trips* beyond their allocated number Guided Trips.
- *Flex Trips* are temporary in nature, maybe be adjusted over time, and are non-transferable.

- Outfitters report the use of *Flex Trips* just as they would standard trips at year end.
- *Flex Trips* can only be used by an outfitter two out of any three consecutive years.

#### RULE IV: Transfer of Guided Trips

- Outfitter historical use is attached to an SRP Permit. SRP holders may only transfer or receive Guided Trips.
- Guided Trips may be transferred at the discretion of the Outfitter only with notice to FWP and may only be transferred to an already qualified SRP holder.
- Each outfitter entering into a transfer of Guided Trips with one or more other qualified outfitters must do so by completing a transfer request form prescribed by the department. Prior to being filed with the department, a trip transfer request is not complete or valid for any purpose and may be cancelled by any licensee that is a party to it.
- The records of FWP comprise the official records of trips and each purported transfer of trips is invalid and void that is not reflected in FWP records.

#### RULE V: Tiers and Loss of Guided Trips

The percentage of total trips conducted by outfitters from 2011 through 2018 revealed consistent and distinct groupings of number of trips outfitters conducted from year to year. During 2018, 100 outfitters (56%) working on the Madison River conducted 25 trips or less, 24 outfitters (13%) conducted 26-50 trips; 19 outfitters (11%) conducted 51-100 trips. Twenty-eight (16%) outfitters conducted 100 trips or more. Applying management options to tiers of outfitters, whether Guided Trips or Flex Trips, can more effectively manage a distinct group of outfitters without affecting management across all outfitters.

SRP Holder's use of Guided Trips often changes over time. Outfitters that decline over time in their use of Guided Trips will receive a reduction in their allocation of Guided Trips. Guided Trips which are forfeit will be made available to other qualified SRP holders through a trip distribution pool.

- Tier 1 SRP Holder's with less 25 or fewer Guided Trips are exempt from mandatory Guided Trip reductions.
- Tier 2 SRP Holder's with 26-50 Guided Trips will drop to 25 Guided Trips if they have 3 consecutive seasons of use fewer than 26 total Trips.

- Tier 3 SRP Holder's with 51-100 Guided Trips will drop to 50 Guided Trips if they have 3 consecutive seasons of use fewer than 51 total Trips.
- Tier 4 SRP Holder's with over 100 Guided Trips will receive 80% of their Guided Trip allocation if they operate less than 80% of their Guided Trip allocation for 3 consecutive seasons.
- Any SRP Holder that increases their Guided Trip allocation by more than 150 Guided Trips through a transfer will be granted 5 seasons to increase their use before a loss of Guided Trips is required due to lack of use.
- If Any SRP Holder documents 0 use for 3 consecutive years the permit will be forfeit.

#### RULE VI: Permit Application and Fees

- SRP holders will apply annually to renew their SRP permit.
- Application fees will be \$110 per SRP permit.

#### RULE VII. Reporting and Use Fees

- SRP holders will submit an annual report for each SRP permit.
- Annual reports will include trip report logs (there is no need to differentiate between Guided Trips and Flex Trips on use logs).
- SRP holders will pay 3% of gross revenue less the permit application fee.

#### RULE VIII: Plan Evaluation

- The Madison River Recreation Management Plan will be quantitatively evaluated by section or reach and across time immediately following the first year of implementation.
- Following the first-year evaluation, similar quantitative evaluations will be conducted every 3 years.
- Our proposed timeline of quantitative evaluations and reports will allow this program to be adaptive to changing conditions and allow for timely fixing of any flaws or problems in the program.

- Annual reports will be generated by FWP that contain quantitative use data by river section and time as well as financial data.
- Evaluate river use from SRP holders.
- Evaluate satisfaction of SRP holders and generate use data annually.

#### RULE IX: Commercial Use Working Group

- Establish a Madison River Commercial Use Working Group under the authority of the FWP Region 3 River Recreation Manager.
- The Commercial Use Working Group will be comprised of the Region 3 Recreation Manager, a member of the Fish & Wildlife Commission, and at least three Madison River outfitters holding a current valid SRP.
- Establish an appeal process for conflicts and complaints.
- Commercial Use Working Group may award Guided Trips to eligible outfitters from the SRP Trip Distribution Pool via lottery.
- Commercial Use Working Group will review total use:
  - Adjust Guided Trip allocations as needed if SRP holder use declines
  - Review Guided Trip additions to the SRP Trip Distribution Pool.
  - Review the annual number of Flex Trips eligible for outfitter use. If the total use of Guided Trips and Flex Trips exceed the combined use levels of 2019 and 2020 the annual number of Flex Trips available to SRP Holders maybe be reduced.
  - If total trips for an SRP holder is 0 for 3 consecutive years, permit is forfeit and allotted trips will be placed into the SRP Trip Distribution Pool.
- SRP Trip Distribution Pool
  - Existing SRP Holders that have operated at least 95% of their Guided Trips in the previous season may apply to receive Guided Trips from the Trip Distribution Pool via lottery
  - Additional Guided Trips will be considered as part of the total Guided Trips for that SRP holder (not temporary as done on the Big Hole and Beaverhead Rivers).

- Additional Guided Trips may be forfeit in the future due to reduced use as defined in IV “Loss of Guided Trips”.
- New Entry
  - Commercial Use Working Group may assign a fixed number of new permits to be issued. New permits will be awarded to qualified licensed Montana outfitters that have applied for a new permit via a lottery.
- SRP Permits
  - SRP Permits are transferable.
  - Any SRP holder may hold a maximum of two permits. No outfitter can operate more than 10% of total allocated use for all commercial users.
  - SRP Permits shall remain individual permits to allow transferability of each SRP Permit separately. An SRP holder may request the Commercial Use Working Group to combine permits into one on an individual basis.
  - New permits issued will receive a 10-trip Flex day permit that allows the operator to operate up to 10 days annually while building their historic use unless being transferred from a current SRP which will receive whatever historic use that current SRP holds.

#### RULE X: No-cost, No-limit Madison River User Stamp

On an annual basis, 89% of fishing on the upper Madison comes from non-commercial anglers. Angler use has increased over the past 20 years and in 2017 was 207,000 angler days, projected estimated use during 2019 was 249,000 angler days. Information on trends in non-angling use of the river is less clear, but overall use on the river has been increasing and is expected to continue to rise, regardless of any cap on commercial use.

Management tools such as walk/wade, rest-rotation, and access site improvements can help maintain the quality of experience, but lose effectiveness as overall use increases. Setting limits or caps on non-commercial use is premature because of a lack of information related to the desires and concerns of non-angling recreationists on the river. However, instituting a comprehensive data-gathering tool is recommended to obtain more information on all current use and type of use on the river. Such a system could be implemented by requiring an unlimited no-cost river use stamp. Increasing use levels would probably necessitate a cap or limit on all use in the future to help protect the resource and maintain quality of experience.

- Establish that any recreational user would be required to obtain an annual stamp from FWP. Mandatory reporting of river use would be required to ensure access to the river in future years.
- At the end of two years, FWP will quantitatively evaluate the effectiveness of the No-cost, No-limit river use stamp to determine the best way to implement necessary limitations.

WHEREFORE, petitioner requests the Department of Fish, Wildlife & Parks and the Fish and Wildlife Commission to adopt these new rules pertaining to management of commercial use on the Madison River.

A handwritten signature in blue ink, appearing to read "Michael A. Bias", enclosed in a thin black rectangular border.

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Michael A. Bias, Ph.D.  
Executive Director  
Fishing Outfitters Association of Montana

June 18, 2020.