

## **Report to the Montana Fish and Wildlife Commission regarding the Madison River Negotiated Rulemaking Committee**

**Don Skaar, FWP Committee representative  
May 31, 2019**

FWP presented a Madison River recreation plan and draft ARM rules to the Fish and Wildlife Commission at the April 2018 meeting. The rules would have implemented the following actions: 1) closing fishing from a vessel in the two existing wade-fishing sections, 2) restricting Special Recreation Permits to those commercial users who had been operating in 2016 or 2017, 3) restricting the number of trips a permit holder can conduct on different sections of the river and at different times of year, 4) establishing a different section of the river each day of the week in which commercial use would be prohibited, and 5) prohibiting all commercial use in the lowest part of the river.

The Commission did not approve the Plan and rules to be put out for public comment, and instead directed FWP to initiate a process to engage with stakeholders to revise the rules. Subsequently, at the August 2018 meeting, the Commission approved FWP's recommendation to establish an advisory committee under the Negotiated Rulemaking Act (MCA 2-5-101-110) for this purpose. Applications were taken in September and October and the Commission approved 10 members to serve on the committee at the December 2018 meeting.

The Madison River Negotiated Rulemaking Committee (NRC) was provided with a charter at the inaugural meeting on January 14, 2019 which read: *Use a Negotiated Rulemaking Rule process (MCA 2-5-101-110) to revise the River Recreation Plan as presented to the Commission on April 19.* While the Committee was not required to use the Department's rule and format during their revisions, it did prove to be a useful template. As the convener of the Committee, FWP took the approach that it had a responsibility to provide the Committee with data in an objective and transparent manner that it had collected on fish populations and social opinions of crowding and satisfaction on the river. The first 1 ½ days of meetings (January 19-20) were devoted to having Regional Fisheries staff sharing these data and discuss their implications.

A centerpiece of the FWP presentations was a mail survey of 2,941 anglers in 2016 who had reported fishing on the Madison between 2001 and 2015. The survey was intended to gauge acceptability in terms of numbers and size of fish caught as well as social aspects of the angling experience (numbers of other anglers (wade or float) encountered, crowding at boat ramps or on the river). This was evaluated for different sections of the river and at different times of year. This impetus for this survey was feedback FWP had been receiving for years which suggested dissatisfaction with the increasing river use. Results of the 2016 survey showed that 42.1 and 41.3% of respondents, respectively, felt that the number of people (and their vehicles)

at river access points and the number of people float fishing the river in the Lyons Bridge to Ennis Dam section during the summer was either very unacceptable or unacceptable. These percentages were much higher than those who felt the numbers were acceptable or very acceptable (26.4 and 30.3%, respectively). It is not known how much more dissatisfied anglers have become over the years, but it is relevant to note that angler pressure on the Madison River (as determined through the FWP biennial surveys) has increased over 300% since 1997, and the rate of increase has been steady (with the exception of the 2011, which was exceptionally cold and rainy) up through the most recent survey in 2017.

The Committee approved Mike Mitchell from the University of Montana as their facilitator. Mike utilized a process called Structured Decision Making (SDM) to try to get the Committee to agree by consensus to revisions to the April 2018 rules. Over the course of the next six meetings (February 19-20, March 6-7 and March 25-26), the group created a problem statement, objectives for solving the problem, and a variety of alternatives to the April 2018 rule. The process stalled at the March 26 meeting with no progress being made toward an alternative all members could live with or support. Mike Mitchell then told the group that SDM was not the appropriate process for this issue, given the level of disagreement over what or if there was a problem needing to be solved.

The Committee agreed to meet one more time on May 2. FWP arranged to have an alternative facilitator (Nedra Chandler) available to describe her services and approach in the event the Committee wanted to continue. After Nedra's presentation and working with the Committee for several hours, a vote was taken on whether to continue to meet. Consensus was not reached, and the group disbanded, but agreed to supply the Commission with individual Committee member reports with recommendations by June 2.

Ultimately, the Committee was very productive from the standpoint that constructive dialogue occurred between members, which in part revealed some deficiencies in the April 2018 plan, but also lead to many creative options and alternatives that were captured in the report submitted by Mike Mitchell.

### **FWP recommendations**

FWP believes it is their responsibility to advocate for measures that maintain or prevent the degradation of quality recreational experiences for all public and commercial users. While implementing such measures, the Department also believes it is appropriate to target certain types of use or users that have disproportionately contributed to said reduced quality recreation. These beliefs are fundamental to the following recommendations made to the Commission.

**Plans to regulate recreational use must address crowding.** During the Committee proceedings, there were criticisms made that the level of dissatisfaction with crowding as detailed in the 2016 FWP survey is too low (or unsubstantiated) to justify acting now. In response we would answer that FWP would be *negligent to wait until a majority of anglers are dissatisfied* to act, especially since numerous other facts suggest the problem will only get worse--the trends in increasing angler use on the Madison River are rising steeply, there is increasing visitorship to nearby Yellowstone National Park, and there is a quickly growing population in nearby Bozeman/Gallatin County. The FWP survey revealed a high level of unacceptability regarding the crowding at access sites and on the river. Crowding at boat ramps can potentially be alleviated, in part, by crowd control or building more ramps, access sites or parking spaces. Crowding on the water however, can only be addressed by redistributing people in time or space, or by limiting overall use.

Based on the above, FWP recommends revising the April 2018 draft rule to begin the redistribution of anglers beginning with the new license year in 2020. Proposals to limit commercial and/or non-commercial growth in a fair and equitable manner will require multiple tools, may also need to be tested for effectiveness, and require more interaction with stakeholders before being implemented, possibly in 2021. Details of our proposed revisions to each of the rules in the April 2018 plan are as follows:

**New Rule I** called for closing fishing when access is gained by a vessel or float tube in both of the existing wade sections—Quake Lake outlet to Lyons Bridge and Ennis FAS to Ennis Lake. Feedback heard during the Committee meetings was that wade access in the lower section (Ennis FAS to the lake) is relatively limited, and boats are necessary to make the section more fishable. Therefore, FWP believes this section should remain under the status quo, but the float-to-fish ban should still be implemented on the upper section. Several Committee members mentioned the need to address crowding at access sites by finding ways to get people on and off the water more quickly at boating access sites, either by providing more ramps, redesigning sites for better traffic flow, or education on etiquette and boat/trailer handling. These are legitimate concerns to address a crowding issue described in the FWP 2016 survey, but they do not need a rule or Commission authority to implement. FWP will work with stakeholders to prepare and implement solutions.

**New Rule II** proposed to cap the number of Special Recreational Permits (primarily fishing outfitters) to curtail growth in commercial use--those being able to operate in the future would be limited to those who had operated in 2016 or 2017. Because most fishing outfitters are small-volume and in theory have potential for considerable growth, this cap wouldn't substantially limit growth. Some proposals were presented during the Committee meetings that would more directly control commercial growth by establishing an allocation system where outfitters are capped at their existing levels of use (or allowed some level of growth). This discussion also involved designing the system to avoid "monetizing" permits, as currently exists on the Beaverhead-Big Hole rivers. One way to achieve this is for the State to hold the permits,

rather than the outfitter, and require that permits be applied for and reissued each year. Because of the complexity of issues, FWP recommends withdrawing New Rule II from consideration and asking the Commission to direct us to form a committee with current and prospective SRP holders and design a system acceptable to all that can be implemented in 2021.

**New Rule III** as proposed would prohibit commercial use in a different portion of the Lyon's Bridge-Ennis FAS section each day of the week. This prohibition would create a less crowded stretch each day of the week, especially during the busy summer months when the commercial outfitters operate the majority of boats in this section. However, feedback received during the Committee meetings pointed out that by excluding the outfitters from stretches of the river interior to the up and downstream boundaries of this section will impact flexibility and length of river that can be floated by outfitters. Consequently, the revised FWP recommendation is to institute the prohibition only on the uppermost stretch (Lyons-Pallisades Recreation Area) on Saturday and on the lowermost stretch (Varney Bridge-Ennis FAS) on Sunday. This still provides some less crowded areas while retaining a contiguous section of the river for outfitters to operate.

**New Rule III** also proposed to limit the number of trips per day by each outfitter for different sections and times of year. The purpose was to help with redistributing people as well as to cap overall use levels. Feedback received during the Committee meetings made it clear that this approach would have the effect of limiting growth of large-volume outfitters (who are already close to the trip limit), but would allow for tremendous growth of small-volume outfitters, with the effect that overall growth potential may be virtually unrestrained. FWP therefore recommends withdrawing the trip limits from New Rule III.

New approaches are needed to address growth, and the task is made difficult since there are four segments of the angling community—commercial, noncommercial, resident and non-resident—that contribute to the crowding, yet because there is overlap among these groups, finding a way to limit or reduce the growth of each in a fair and equitable manner will require multiple tools and may also need to be tested for ease of implementation and effectiveness. Ideas include caps on non-residents, commercial users, or all users—administered through a lottery draw system or first-come, first-serve permit. Part of the challenge in this will be to decide how much, if any, additional growth to allow. FWP recommends the Commission to direct us to work with affected stakeholders with the intent to propose something to the Commission for implementation in 2021.

**New Rule III** had as a final recommendation to prohibit commercial use in the entire section of the lower river from Greycliff FAS to the confluence with the Jefferson River. Feedback received during the Committee meetings was that this stretch receives little commercial use, and it is likely to be even less so if waters continue to warm and trout populations perhaps diminish in this section, making the rule unnecessary. In addition, this prohibition would adversely affect non-angling commercial guiding, that contributes little to crowding, but likes to use this section

of the river because of its scenery. Therefore, FWP recommends withdrawing this portion of New Rule III for further evaluation.

**New Rule IV** proposed that the Commission review the rules every five years starting in 2024. No feedback was received in opposition to this and FWP will only recommend changing the date to 2025.

### **Summary**

FWP recommends revisions of its rules to address concerns and suggestions heard during the Committee meetings. Recommended changes proposed here are focused on addressing the crowding issues identified in the 2016 survey by redistribution of anglers and potentially through limitations on commercial and non-commercial use.

In closing, it is important to emphasize that the comments received from individual MRNRC members, as well as those received on the FWP website, do not likely reflect the feelings of the broader public users of the Madison River. This can only be achieved through more intensive outreach, such as open houses, listening sessions, randomized surveys, or response to an actual environmental assessment and draft rule.