



Jeff Skelding  
Executive Director  
Friends of the Upper Delaware River  
158 East Front Street  
Hancock, NY 13783

January 12, 2021

Fred Henson  
Coldwater Fisheries Unit Leader  
NYSDEC Division of Fish and Wildlife  
625 Broadway  
Albany, NY 12233-4753

Dear Mr. Henson,

Friends of the Upper Delaware River (FUDR) is the only professionally staffed nonprofit organization in the Upper Delaware River (UDR) watershed working every day to protect and restore this magnificent cold water ecosystem and wild trout tailwater fishery.

FUDR's mission is to protect and restore the UDR watershed for the benefit of local economies, communities, people, and the environment.

FUDR commends the work of the New York State Department of Environmental Conservation (NYSDEC) on the development of New York's first statewide Trout Stream Management Plan. We appreciate the opportunity to submit these comments on the draft sportfishing regulations that accompany the Trout Plan and how we believe they will impact the UDR tailwater fishery (East Branch, West Branch, and Main Stem) once adopted.

We understand the enormous challenges inherent to this rulemaking exercise and we appreciate the expansive public outreach effort that the NYSDEC Fisheries Bureau engaged in to help ensure maximum awareness of the content and impact of the Trout Plan and associated regulations for anglers and other interested UDR watershed stakeholders.

### **UDR Tailwaters – A Unique New York Wild Trout Fishery**

FUDR and our members and supporters feel strongly that the UDR tailwater system and wild trout fishery is unique among New York State trout streams and should be managed as such. **First, the UDR is the only "Wild-Premier" tailwater fishery in NYS.** The continuous supply of cold, clean water from the New York City Delaware River Basin Reservoirs, prolific macroinvertebrate populations, tributaries which provide spawning habitat for wild brown and rainbow trout, cool headwater streams which are necessary for the survival of native brook trout all combine to make the UDR tailwaters the finest wild trout fishery in New York and one of the best in the country. The abundant opportunities for anglers to both wade and boat the UDR are unmatched in the state creating expanded opportunities for public access to the resource. The sheer size of the UDR tailwater system is significantly more expansive than other NY "Wild

Premier” trout streams. There is an enormous economic contribution to the local and regional economy from angling and other outdoor recreational pursuits provided by the river system. The international appeal of the fishery and its geographic proximity to numerous large northeastern U.S. urban centers attract thousands of anglers every year. These attributes create a unique combination of factors that set this system apart from others in the state and highlight the importance of managing this unique fishery independently and at a watershed scale.

We understand that, in part, the intention of the Plan and the draft regulations is to simplify and homogenize the statewide regulatory framework that governs trout fishing in New York State. However, as stated above, we also believe the special qualities of the UDR tailwater fishery and the marked differences from other Wild Premier streams in New York requires, where appropriate, consideration of individually tailored protections to address the unique features and needs of the UDR fishery. We also believe that some of the standards in the Trout Plan and the regulations for Wild Premier designations make more sense for shorter stretches of smaller streams than they do for the more expansive UDR tailwater system. For these reasons, we respectfully request that, where appropriate, a more individualized approach be contemplated in the final adoption of these regulations as they address New York’s UDR wild trout fishery.

## **FUDR’s Comments on the Proposed NYS Sportfishing Regulations**

With the exception of the extended November - April Catch and Release Season, FUDR believes the adoption and implementation of the proposed regulations will lead to significant improvements in tailwater fisheries management for New York’s portion of the UDR watershed. These improvements will also help maintain and improve the recreational economy of the UDR region which many local communities and residents rely on for their livelihood.

### **A. FUDR supports the following elements of the proposed New York State Trout Stream Management Plan and the associated Sportfishing Regulations as they apply to the UDR tailwaters:**

1. **Designating the UDR tailwaters as a “Wild Premier” trout stream.** Assigning the highest level of regulatory protection to the UDR correctly recognizes the high-quality nature of the watershed and the fishery and will help generate new resources at the federal, state, and local level to ensure its continued protection and restoration.
2. **Eliminating the stocking of hatchery fish in the Upper East Branch.** High quality wild trout streams provide multiple ecological, economic, and social benefits. Eliminating the introduction of stocked fish over wild fish in the UDR tailwaters is a vitally important management approach to maintain these benefits.
3. **Reducing the system wide fish harvest limit from 5 to 1 in the UDR tailwaters.** While most UDR tailwater anglers voluntarily practice catch and release, recognizing the sensitive and unique qualities of the fishery with an eye towards preserving populations of wild trout, current regulations permit a harvest of 2 fish *each* on the East and West Branches and one on the Main Stem per day. Once adopted, the new regulations will establish a system wide harvest of 1 trout per day (any size) throughout the Wild Premier stretches of the UDR tailwaters.
4. **Recognition of the importance of the high-quality fishery on the Main Stem from Lordville to Callicoon.** This reach of the UDR tailwaters holds wild trout throughout the year and is a highly desirable angling location, particularly in the spring and fall. The regulations indicate that Wild Premier protections will be assigned to this stretch (and beyond) which we strongly support. However, this reach is specifically excluded from the Plan. We believe it should be formally

designated as Wild Premier in the plan and regulations. (See also point #1 below under *Points of Clarification and Recommended Modifications to the Draft Regulations*).

**B. FUDR does not support the proposed “Catch and Release” extended fishing season.**

FUDR's member and supporters overwhelmingly believe that extending the UDR fishing season through the fall, winter, and early spring months can only be a detriment to this increasingly pressured fishery. Despite numerous inquiries, it continues to remain unclear to us what the NYSDEC's motivation is behind the proposed extended season and we believe, whatever it may be, that justification likely does not apply to the UDR fishery due to the unique elements of this world class wild trout tailwater system.

The response to our concerns provided by the NYSDEC after the round of public comments on the Trout Plan (Page 37-NYS Trout Stream Management Plan), in part, asserts that no studies exist to prove harm if the fishing season is extended. In our mind, that is **not** a sufficient scientific foundation to justify the adoption of such a sweeping change in the state's fishing regulations. Further, there are current regulations in place that prohibit angling in certain sections of the UDR tailwaters during the fall/winter/spring. These regulations were adopted with the express purpose of protecting trout spawning beds. We see no information in the Trout Plan or the proposed regulations that suggests these existing regulatory prohibitions on off season angling are no longer necessary or valid. It would be helpful if the NYSDEC could provide us with the information that justifies the elimination of existing angling prohibitions in the UDR tailwaters and your rationale for extending the fishing season through the fall and winter months. **FUDR believes we should retain the existing angling prohibitions and eliminate entirely the proposed extended catch and release season.**

Should the NYSDEC determine the necessity to move forward with the new November-April catch and release season in the UDR Tailwaters, data should be collected to assess the impacts in spawning tributaries and the impacts on young of the year trout. We also request educational signage be erected by the NYSDEC where trout spawning beds are identified. For the past three years, FUDR has lead a volunteer Redd count effort as part of the NY/PA Joint Fisheries Investigation Plan and has provided that data to the NYSDEC. Additionally, we would like assurance that at least one reach in the East Branch and one reach in the West Branch will be included as a part of the impact study. Further, we request that FUDR, other interested conservation organizations, anglers, and other watershed stakeholders be provided the opportunity to play a role in the development of any impact study of off season angling in the UDR tailwaters.

**C. Points of Clarification and Recommended Modifications to the Draft Regulations:**

- 1. The Lordville to Callicoon reach should be included in the NYS Trout Stream Management Plan and designated as Wild Premier** – While we support NYSDEC stated intentions to apply equivalent wild premier protections for this stretch, we believe it should be formally designated as a Wild Premier reach. In the NYS Trout Stream Management Plan, the NYSDEC notes “temperature” and “ecological characteristics” as limiting factors to designating this stretch as Wild Premier. We are unable to find a temperature parameter listed anywhere in the Trout Plan or

proposed regulations as designated criteria for Wild Premier trout streams. We believe a close examination of the Wild Premier criteria as they apply to the Lordville-Callicoon reach supports the formal designation of Wild Premier for this section of the river.

2. **Default designations for UDR tributaries.** While the main channels of the UDR tailwaters (EB, WB, MS) are designated as Wild Premier trout streams, most of the tributaries receive a default designation of Wild. We believe the high-quality UDR tributaries in the tailwaters should default to the Wild Quality designation and receive the requisite protections assigned to that designation.
3. **Allow only single point hooks.** For many years, UDR anglers have noticed an alarming increase in fish injuries suspected to be caused by multi-point hooks. For that reason, FUDR strongly supports allowing only single point hooks when fishing on Wild, Wild-Quality, or Wild-Premier reaches and this requirement should be included in the draft regulations.
4. **Timing of stocking policy changes.** We anticipate that stocking in the UDR tailwaters will cease upon adoption and implementation of the new regulations for the 2021 NY fishing season. If this timeline cannot be met, we respectfully request an explanation from the NYSDEC to avoid confusion among anglers and other watershed stakeholders when the 2021 fishing season commences.

#### **D. General Comments on Trout Plan Implementation**

1. **The Upper Delaware River Joint Fisheries Investigation (JFIP).** The recommendations of the JFIP should lead to refinement of the management strategies outlined in the Plan and any necessary regulatory changes for the UDR Tailwaters wild trout fishery. FUDR and our conservation partners look forward to working with the NYSDEC to complete the UDR Tailwater Management Plan in 2021.
2. **Prioritize Oquaga Creek.** NYSDEC should prioritize Oquaga Creek for an upgrade from “Stocked” to “Wild-Quality.” Upon implementation of the new Trout Plan regulations, Oquaga Creek will be the only stocked tributary in the UDR Tailwaters. FUDR believes that Oquaga Creek is a highly suitable candidate stream to invest in habitat restoration and other stream improvement efforts that will eventually lead to an upgrade in stream designation to a “Wild Quality” tributary. We suggest a conversation begin between the non-profit conservation organizations and local governments who are actively engaged in habitat restoration and the NYSDEC Fisheries Bureau immediately upon adoption of the statewide regulations to explore this idea.
3. **Water Releases from the NYC Delaware River Basin Reservoirs.** The NYSDEC Fisheries Bureau in Albany and in Region 4 should be more assertive in their intra-agency communications and with the 1954 Supreme Court Decree Parties (NY, NJ, PA, DE, NYC) with regard to water releases to the UDR tailwaters from the New York City Delaware basin reservoirs with the protection of the UDR wild trout fishery as the paramount management objective and concern. We believe adoption of the new statewide trout plan and associated regulations, the finalization of the Joint Fisheries Investigation Plan and the subsequent development of a UDR specific wild trout management plan, plus the leadership roles assumed by NYSDEC Fisheries Bureau staff on the Delaware River Basin Commission Subcommittee on Ecological Flows puts the Bureau in a far more favorable position to be more influential on policy matters and management decisions with respect to the implementation of the Flexible Flow Management Program and daily decisions on NYC reservoir management that have critical implications for the UDR wild trout fishery.
4. **Improve enforcement.** The ongoing and chronic lack of NYSDEC (and other regulatory agencies) enforcement in the UDR tailwaters can undermine many of the positive changes in the

new trout fishing regulations. A public perception that any new regulatory protections adopted to protect the fishery are largely hollow if there is little to no enforcement happening will hamper much needed public support and enthusiasm for new programs. Many UDR anglers cite illegal angling activities and the lack of enforcement as their primary concern and believe the problem is becoming worse with each passing year. The angling community is more than ready to assist the NYSDEC in improving enforcement and is interested in exploring innovative ideas, including partnership agreements with NYSDEC enforcement staff to reverse this disturbing trend. We also urge the NYSDEC Fisheries Bureau to aggressively advocate for robust enforcement funding in the annual New York State budget process.

5. **Coordination with Pennsylvania.** It is our understanding that the Pennsylvania Fish and Boat Commission (PFBC) is agreeable to working with the NYSDEC in harmonizing their trout fishing regulations with the New York regulations in the border water reaches of the UDR tailwater system that begin at Monument Pool on the West Branch. According to PFBC staff, the Pennsylvania regulations are at least one year behind New York. We suggest frequent communications be initiated by NYSDEC staff with the PFBC and involve UDR conservation organizations. These discussions should begin immediately upon adoption of the New York regulations to ensure effective coordination for the portion of the UDR trout fishery that is shared by the two states.

Thank you for considering these comments. We look forward to the adoption of the new sportfishing regulations and working with the NYSDEC on their implementation in UDR tailwater fishery. We also look forward to our continued work with the NYSDEC and the PFBC on finalizing the Joint Fisheries Investigation Plan in 2021 and the development of the UDR Tailwaters Fishery Management Plan that we hope will supplement and strengthen protections for New York finest wild trout fishery.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeff Skelding". The signature is fluid and cursive, with a long horizontal stroke at the end.

Jeff Skelding  
Executive Director  
Friends of the Upper Delaware River  
410-245-8021