



## **Trout Unlimited Policy on the Ownership of Access Rights for the Purpose of Recreational Fishing** *Adopted by the Board of Trustees on September 16, 2012*

This Policy applies to the acquisition by TU national, TU chapters, and TU councils of any right to access private property for the purpose of recreational fishing. This Policy covers the full spectrum of fishing access arrangements, from permanent recorded easements to "handshake" oral arrangements with a landowner. It applies whether the access is for the benefit of the public or is limited to members of TU (or of chapters or councils). As detailed below, this Policy establishes a flexible system of oversight that varies with the scope and formality of the access rights in question.

This Policy is intended to address liability risks that arise from the holding of access rights, so those risks can be addressed before commitments are made and liabilities incurred.

This Policy applies only to access rights for recreational fishing that are owned, or proposed to be owned, by TU National, TU chapters, and TU councils. It does not apply to access rights that exist by operation of law or to access rights owned by individuals, another organization or by a governmental agency.

This Policy supplements the policy on the ownership of real property adopted by the Board of Trustees on February 6, 2012, and the policy on conservation easements adopted by the Board of Trustees on February 3, 2009, both of which remain in effect. This Policy does not apply to access arrangements for purposes of conservation projects, except to the extent that such arrangements include provisions establishing access for recreational fishing.

### **I. Guiding Principles**

The ownership of fishing access rights can create both risks and benefits for TU entities. On the one hand, owning access rights can create legal risks, including claims for personal injury, property damage, violation of federal and state disability laws, and violation of the laws governing TU's charitable non-profit status. On the other hand, the Board recognizes that fishing access arrangements can be valuable tools that can help chapters and councils develop organizational capacity, solicit funds from donors, implement conservation projects, and pursue other mission-related goals. To provide a means of balancing these risks and benefits, this Policy is based on the following principles:

1. Where possible, access arrangements for fishing should be held by organizations independent of TU.
2. Where TU does decide to hold access rights, it should do so only after identifying and balancing the risks and benefits of ownership and ensuring that risks are minimized to the degree possible.
3. The process for approving the acquisition of access rights should be tailored to the degree of risk involved so it neither ignores significant risks to the organization nor imposes unnecessary requirements on TU National, chapters, and councils.
4. It is important that TU National be aware of all access arrangements held at all levels of the organization so risks can be assessed and to ensure that coverage under TU's insurance policies is extended to all eligible activities.

### **II. Policy**

All agreements entered into by TU National or by any TU chapter or council that provide access for purposes of recreational fishing must be authorized under this Policy before they become effective. The specific authorization procedures and requirements are set forth below.

#### **A. Written Agreements Involving Chapters and Councils.**

**1. Approval required.** All written agreements providing fishing access rights, whether temporary or permanent, must be approved by the Vice President for Volunteer Operations before being entered into by any TU chapter or council.

**2. Criteria for approval.** Upon receiving a written request for approval and copy of the proposed access agreement, the Vice President for Volunteer Operations shall consider the following factors:

(a) *Potential risks and benefits to TU.* The VP for Volunteer Operations shall discuss with the chapter or council the purpose for entering the access agreement, the expected benefits to TU, and any specific conditions of the property or any specific provisions of the proposed agreement that pose particular risks of liability.

(b) *Alternative ownership.* The VP for Volunteer Operations shall discuss with the chapter or council whether the same goals could be achieved by having an entity other than TU enter into the access agreement and whether such possibilities have been explored.

(c) *Construction or maintenance obligations.* The VP for Volunteer Operations shall evaluate, with the affected chapter or council, whether any construction or maintenance obligations to be undertaken by the chapter or council in the proposed agreement (or any construction or maintenance work planned to be undertaken by the chapter or council even if not imposed as an obligation in the proposed agreement) create undue liability or contractual risks for the chapter or council and whether the chapter or council over time will be able to meet those obligations.

Note that if a chapter or council undertakes an obligation (or obtains a right) to construct or maintain trails, bridges, or any other structures for the purpose of providing access for fishing, it may need to comply with the Americans with Disabilities Act and regulations adopted under that Act. Contact the Volunteer Operations staff for more information on this issue.

(d) *Public access.* As a matter of policy, it is preferable that proposed agreements provide for access by the general public rather than only by members of TU. If the chapter or council intends to use donated funds for which the donor has received a charitable tax deduction (i.e., ordinary council or chapter funds) to acquire, improve, maintain, or manage the access rights in any way, the agreement **must** provide access to the general public.

(e) *Insurance.* In light of the above factors, the VP for Volunteer Operations shall consider whether any additional insurance should be obtained in connection with the proposed access agreement.

**3. Standardized agreements.** In the case of TU programs that create fishing access rights through a standardized written agreement that is to be used for multiple landowners, the standardized form must be submitted to the VP for Volunteer Opportunities for approval. Once the form is approved, the program may use it to create individual agreements with landowners without seeking additional approval, so long as no substantive changes are made to the form or the program. The decision of the VP for Volunteer Operations to approve or disapprove a proposed standardized agreement shall be based on the factors listed in section 2, above.

**4. Existing agreements.** No approval is required for agreements already in existence on the effective date of this Policy. However, all chapters and councils shall submit all existing written fishing access agreements to the VP for Volunteer Operations as part of their initial reporting under section D, below, unless those agreements have previously been submitted to the VP. The VP for Volunteer Operations may recommend changes to existing access arrangements that should be pursued through negotiation.

## **B. Oral Arrangements Involving Chapters and Councils.**

Oral arrangements for recreational fishing access do not need to be reviewed or approved by the VP so long as both of the following are true:

- The arrangement does not impose on the chapter and council any construction or maintenance obligations and the chapter or council does not intend to do any construction or maintenance in connection with the access,
- If the arrangement involves the use of donated funds for which the donor has received a charitable tax deduction (i.e., ordinary council or chapter funds) to acquire, improve, maintain, or manage the access rights in any way, the arrangement must provide access to the general public.

Oral arrangements not meeting both of these criteria must be reviewed by the VP for Volunteer Operations and may be disapproved.

### **C. Approval of Agreements and Appeal to the Executive Committee.**

For any agreement for access for fishing that requires approval of the VP for Volunteer Operations under this Policy, the VP shall, in writing, approve the agreement, disapprove the agreement, or request that the chapter or council renegotiate one or more specific provisions of the agreement.

If the VP for Volunteer Operations disapproves an agreement, he shall explain the reasons for disapproval in writing, based on one or more of the factors listed in section 2, above.

The VP for Volunteer Operations shall take action on the proposed agreement as soon as possible, but in no case later than 30 days after receiving a copy of the proposed agreement and request for approval.

If the chapter or council disagrees with the decision of the VP for Volunteer Operations, it may appeal the matter in writing to the Executive Committee of the Board of Trustees within 30 days. The Executive Committee shall act on the appeal as expeditiously as possible. The decision of the Executive Committee shall be in writing and be final.

### **D. Reporting of Access Agreements By Chapters and Councils.**

All chapters and councils must disclose all arrangements for fishing access – both written and oral – to the VP for Volunteer Operations and must disclose any new arrangements for fishing access annually. Access arrangements for fishing reported to the VP before the date of this Policy need not be reported again to the VP. All chapters and councils must disclose to the VP the termination of any access arrangement, so the VP's records are kept current. The reporting required by this section D is crucial to assuring that all eligible activities are covered by TU's insurance policies.

### **E. Applicability to TU National.**

All of the above provisions of this Policy apply equally to access rights for recreational fishing proposed to be owned by the national organization, except that all reviews and approvals of the acquisition of such rights shall be conducted not by the VP for Volunteer Operations, but by the VP supervising the program proposing to acquire the access right.