

## **Petition for Adoption of Temporary Emergency Rules to Protect Wild Columbia and Snake River Steelhead**

### Petitioners:

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### Action Agency:

Michael Finley, Chair  
Oregon Fish and Wildlife Commission  
Curt Melcher, Director  
Oregon Department of Fish and Wildlife  
3406 Cherry Avenue NE  
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### **Introduction and Summary of Proposed Action:**

Petitioners The Conservation Angler and Wild Fish Conservancy, conservation organizations based in Washington with offices and members in Oregon, requests that the Oregon Fish and Wildlife Commission (the Commission) directs the Oregon Department of Fish and Wildlife (the Department) adopt temporary emergency rules immediately, implementing changes to angling rules to protect ESA-listed wild steelhead in the Columbia and Snake Rivers and in Oregon tributaries.

### **Provision Allowing Adoption of Temporary Rules:**

Pursuant to the Oregon Administrative Procedures Act at Oregon Revised Statute (ORS) 183.335(5) the Commission may adopt temporary rules upon a finding that the public interest faces imminent and grievous harm.

### **Applicable Statutory Language:**

(5) Notwithstanding subsections (1) to (4) of this section [the Oregon APA], an agency may adopt, amend or suspend a rule without prior notice or hearing or upon any abbreviated notice and hearing that it finds practicable, if the agency prepares:

(a) A statement of its findings that its failure to act promptly will result in serious prejudice to the public interest or the interest of the parties concerned and the specific reasons for its findings of prejudice;

(b) A citation of the statutory or other legal authority relied upon and bearing upon the promulgation of the rule;

(c) A statement of the need for the rule and a statement of how the rule is intended to meet the need;

(d) A list of the principal documents, reports or studies, if any, prepared by or relied upon by the agency in considering the need for and in preparing the rule, and a statement of the location at which those documents are available for public inspection; and

(e) For an agency specified in ORS 183.530, a housing cost impact statement as defined in ORS 183.534.

(6)(a) A rule adopted, amended or suspended under subsection (5) of this section is temporary and may be effective for a period of not longer than 180 days. The adoption of a rule under this subsection does not preclude the subsequent adoption of an identical rule under subsections (1) to (4) of this section.

(b) A rule temporarily suspended shall regain effectiveness upon expiration of the temporary period of suspension unless the rule is repealed under subsections (1) to (4) of this section.

#### **Legal Authority Relied Upon and Bearing Upon the Promulgation of the Rule:**

The Oregon Fish and Wildlife Commission (the Commission) has the statutory authority to protect the state's fish and wildlife resources for present and future generations (ORS 496.012 and ORS 496.138). The Commission also has the statutory authority to pass administrative rules, or to delegate this duty to the Department, regulating the fisheries of the state in order to meet its overriding statutory duty to protect and conserve Oregon's fish and wildlife resources (ORS 496.116 and ORS 496.118).

#### **Background Situation:**

Between May 1 and Wednesday August 3, 62,696 adult steelhead had passed Bonneville Dam. This is about 10,000 fewer adults than 2015 and a very small fraction of the millions of wild steelhead that historically returned to the Columbia and Snake Rivers annually. The 2016 steelhead run is about 44% of a good ten-year average for steelhead (2010-2000), or about 58% of the current ten-year steelhead average (2015-2006).

Oregon is part of the Columbia River Compact which includes the state of Washington and the Columbia and Snake River treaty tribes. The Compact makes the run forecasts, recommends the seasons and set the annual angling rules. According to the Compact's own reports, typically, half of the annual steelhead run passes over Bonneville Dam's fishways by August 11. The Compact's 2016 pre-season forecast for the steelhead run was just downgraded by 10,000 adults in late July so the total predicted steelhead run over Bonneville is now 256,200 wild and hatchery adult steelhead, down from 266,000 adult steelhead. If the August 11 date holds true, the total passage of steelhead by that date should be 128,100 adult steelhead over Bonneville. To achieve that number and be on forecast, about 64,000 steelhead need to pass Bonneville in the next six (6) days. That would require approximately 10,600 adult wild and hatchery steelhead per day to pass Bonneville. In the past week, daily counts have been no higher than about 2,800 fish per day, and dropped to under 1,500 adult steelhead yesterday.

### **The Current Angling Regulatory Scheme:**

The regulating agencies recently reduced the bag limit from 2 hatchery steelhead per day to just one hatchery steelhead in the lower Columbia below Bonneville. That regulation will also go into place above Bonneville after September 1. Both the current bag reduction regulation and the regulation that will apply above Bonneville Dam on September 1 will not be enforced at any cold water refuge areas in the Columbia River such as Herman Creek, Drano Lake, White Salmon River, nor at the mouth of the Deschutes River where intense angling occurs in a cold water refuge that is critically important for wild steelhead. The planned regulations will allow a two hatchery steelhead bag limit at all of these locations until at least September 1. Additionally, your regulations allow all anglers in a boat to keep fishing until they each retain 2 hatchery steelhead per angler in the boat. This tactic greatly increases the hooking mortality on wild steelhead which must be released unharmed.

### **Endangered Species Act Considerations:**

It is critical not to forget these aggregate return numbers above include all steelhead - hatchery and wild. The total count of wild steelhead over Bonneville since May 1 is approximately 23,647 fish. It is also important to recall that tribal hatchery steelhead programs do not clip the adipose fins on their releases. Therefore, the number of born-wild steelhead returning to the entire Columbia and Snake River basin could be less than 20,000 adults.

Because the federal agencies operating the Columbia and Snake River Hydroelectric system have recently had their river operations found to not be sufficient to prevent the extinction of ESA-listed salmon and steelhead, The Conservation Angler believes that Oregon, if it does not change its angling regulations to protect ESA-listed wild steelhead, is at risk of unauthorized take of this species. Oregon's current Section 4(d) rule permitting angling that causes take, and the incidental take statement (ITS) issued by NOAA to allow limited mortality are based on compatibility with an overall approved Biological Opinion that these state-permitted actions do not jeopardize the species.

### **Other Factors:**

Other factors that should be considered by the Commission as you consider applying this rule change more broadly are:

#### **1. Water Temperatures:**

The water temperatures in the Columbia and Snake Rivers that these steelhead must migrate through create mortality as well as migratory stress that can depress spawning success. The Columbia River from Bonneville Dam all the way up the Snake River to Hells Canyon Dam is running above 70f. The Deschutes River, which just recently became cooler, is the last thermal refuge for Columbia and Snake Basin steelhead for over 100 river miles.

#### **2. Catch and Release Mortality:**

Has the Commission and the Department considered and analyzed the effect of warm water and barbed hooks on the catch and release mortality for wild steelhead that are encountered by anglers seeking to reach their two hatchery fish bag limit? The Commission's "party-boat" angling rule creates an inordinate impact on wild steelhead which are encountered much more frequently than the more abundant hatchery steelhead while anglers fish thermal refugia in pursuit of their boat's absolute limit.

3. B-Run Steelhead Impacts:

The Commission should also consider the effects of tribal harvest on the returning wild steelhead. The relatively bountiful fall chinook run will provide many angling opportunities for recreational and tribal fisheries, but at the expense of the B-run steelhead component which are larger and much more susceptible to targeted tribal commercial chinook harvest.

4. Illegal Harvest:

Does the Commission factor in the effects of illegal harvest of wild steelhead in their survival and recovery? What is the impact factor assigned to this activity?

5. Wild Spawning Escapement:

Will the Commission ensure that the Department meets wild steelhead escapement goals in each Columbia and Snake River tributary before allowing extended hatchery steelhead angling effort?

6. Thermal Refuges:

Has the Commission considered that wild steelhead are responsive to one-half degree temperature difference and gradient? Is the Commission aware of the critical importance of Thermal Refuges in the Columbia River? Wild steelhead, unlike chinook and coho, remain in thermal refuges much longer because they do not have to spawn in the next few months like the salmon. Thermal Refuges are much more significant for wild steelhead survival, and this fact means that they are much more likely to be encountered, multiple times, by anglers in places like Herman Creek and the Deschutes.

7. NOAA Status Review of ESA-Listed Steelhead and Salmon

NOAA completed a 5-year status review of ESA-listed steelhead and salmon populations in December 2015. In that review NOAA found that the B-run component of Columbia and Snake River wild steelhead was at risk to over-harvest in the mainstem Columbia chinook fishery. The assessment also found that 4 of 5 population groups in the Snake River ESU did not meet recovery goal targets related to both harvest impacts and hatchery influences. While this may seem like Idaho's problem, the Idaho and Oregon steelhead populations are harvested, and likely over-harvested, in Oregon and Washington fisheries throughout the Columbia and lower Snake Rivers.

**Conclusion:**

The Conservation Angler is petitioning the Commission to immediately adopt emergency temporary angling rules to protect ESA-listed wild steelhead in the Columbia and Snake River Basins.

**Proposed Commission Action:**

The Commission should direct the Department to:

1. Recommend that the Columbia River Compact adopt a temporary emergency rule that extends the hatchery steelhead bag reduction from two adults to one per angler throughout the Columbia and Snake Rivers effective immediately.
2. Close cold water refuges until Columbia and Snake River water temperatures drop below 68f. Thermal refugia in Oregon include Herman Creek and the mouth of the Deschutes River.

3. If the Commission will not close the thermal refugia areas, then alternatively, the reduced hatchery steelhead bag limit must be immediately applied to all tributary / cold water areas.

Respectfully Submitted by:

*David A. Moskowitz*

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The Conservation Angler  
and on behalf of  
Wild Fish Conservancy