

Agenda Item Summary

BACKGROUND

Oregon law requires the Oregon Fish and Wildlife Commission (Commission) adopt angling regulations annually. Proposals for new rules and rule amendments were developed in consultation with the Oregon Department of Justice (DOJ), Oregon State Police (OSP), and key constituent groups as necessary. The majority of the 2019 proposals are comprised of regulations that were developed as part of the effort to further simplify and streamline angling regulations.

The proposed changes to the 2019 Oregon Sport Fishing Regulations for Commission consideration fit into one or more of the following categories:

1. Critical conservation needs;
2. Housekeeping and error corrections, simplification;
3. Inadvertent restrictions;
4. Regulation changes directed by basin plan adoption;
5. New or expanded non-controversial angling opportunities including actions identified in the 25-Year Angling Enhancement Plan; and
6. Recent petition for amendment to existing regulations.

Issues 1 and 2 of this summary addresses adoption of rules falling within the first five categories.

With respect to the last category listed above, on June 21, 2018, ODFW received a document entitled “Petition to Modify Oregon Sportfishing Regulations to Require Release of Wild Steelhead in All of Oregon’s Southwest Zone Rivers” from Harvey Young, that requested the Commission modify the Sportfishing regulations to require the release of wild steelhead on all streams currently open to wild steelhead retention in the Southwest Zone. After review of this submission, DOJ determined that the petition did not address all of the required elements to be considered a valid petition under the Oregon Administrative Procedures Act (APA). This position was communicated on July 17, 2018. On August 9th the petition was resubmitted and DOJ determined that the petition was sufficient.

Issue 3 of this summary addresses the petition’s proposal and includes a staff recommendation for the Commission’s consideration.

PUBLIC INVOLVEMENT

Multiple public meetings were held to share and discuss the proposed regulation changes shown in Attachment 4. Meetings occurred in Coos Bay, Newport, Tillamook, Astoria, and Hillsboro. Issue 3 is staff analysis and recommendation regarding the wild steelhead petition. A counter proposal to the petition has also been filed, requesting that the Commission maintain the current wild steelhead regulations in the Southwest Zone (proposal is included in public comment section).

ISSUE 1

RE-ADOPT THE 2018 OREGON SPORT FISHING REGULATIONS AS ADMINISTRATIVE RULES, AND UPDATE UNIVERSAL DATE CHANGES.

ANALYSIS

Staff proposes that the Commission re-adopt the 2018 Oregon Sport Fishing Regulations as administrative rule. This allows staff to incorporate any pertinent information from the 2018 Oregon Sport Fishing Regulations into the 2019 Sport Fishing Regulations.

Staff proposes that the Commission allow staff to update necessary universal date changes for the 2019 Sport Fishing Regulations such as dates associated with the standard Free Fishing Weekend (first full weekend in June) and other applicable universal dates.

Staff considers these tasks to be non-controversial and therefore have consolidated these proposals into one draft motion.

OPTIONS

1. Accept the proposed regulation changes.
2. Modify the proposed regulation changes.
3. Reject the proposed regulation changes.

STAFF RECOMMENDATION

Accept proposed changes to the printed version of the 2018 rules and make universal date changes to the 2019 Oregon Sport Fishing Regulations as needed.

DRAFT MOTION

I move to amend OAR Chapter 635 Divisions 011, 013, 014, 016, 017, 018, 019, 021, 023 and 039 as proposed by staff in Attachment 3 and to universally reflect the calendar dates.

EFFECTIVE DATE

January 1, 2019.

ANALYSIS

The proposed rule changes for the 2019 Oregon Sport Fishing Regulations pamphlet are displayed in Attachment 4. Each proposal has been assigned a unique proposal number, describes the current and proposed regulation to be modified, the page number where current regulation can be located, type of regulation to be modified, the purpose of the change, and justification for the change.

The 94 proposed rule changes are shown in Attachment 4. The majority of the proposed changes are simplification of regulations (81). These proposed changes are the direct result of the effort to streamline and simplify the salmon and steelhead regulations. Additionally, there are eight proposals to make housekeeping corrections, three proposals providing new or expanded angling opportunities and one categorized as an inadvertent restriction.

A subset of the proposed changes to existing regulations are summarized below.

Statewide:

There are 4 proposed changes to statewide regulations. Two of these proposals will be housekeeping corrections to the current anti-snagging and salmon/steelhead bobber rules further clarifying the current language. One proposal will modify the possession limits for trout and warmwater species. This change will allow for anglers to have up to three daily limits in possession. A proposal to simplify the striped bass regulations will remove all size and bag limits, standardizing regulations for striped bass in all waters of the state.

Northwest Zone:

There are 51 proposals for the Northwest zone. Forty-nine of these proposals are categorized as simplification. A focused effort was undertaken to standardize the salmon and steelhead regulations throughout the Northwest Zone. The major changes were centered on standardizing and streamlining the seasons when anglers can harvest Chinook and hatchery steelhead. The proposed changes include expanding seasons for Chinook salmon to be open all year in the Little Nestucca, Necanicum, North Fork Nehalem, Nestucca, Three Rivers, Tillamook, Trask, and Wilson Rivers and for hatchery salmon in Bear Creek, Beaver Creek, Plympton Creek and the Clatskanie River.

Proposals also include expanding seasons to be open all year for hatchery steelhead in the Little Nestucca, North Fork Nehalem, Sand Lake Estuary, Soapstone Creek, Bear Creek Beaver Creek, and the Clatskanie River. Additionally there are a few proposals to reduce seasons for hatchery steelhead, open from January through March and in December in Cook Creek, Ecola Creek, Neskowin River and the Salmonberry River. This change provides seasonal consistency in these waterbodies.

Another change proposed for the NW zone is for Big Creek, a lower Columbia River tributary, which would standardize the closure period (August 16 through October 15) and provide additional protection for hatchery broodstock collection while helping to address ongoing snagging issues. With the adoption of this proposal it would further simplify the regulations by allowing for the removal of the anti-snagging rule that is currently in place.

Finally, there is also a proposal for the Nestucca River that would remove the bait restriction in the upper river (Moon Creek to Elk Creek), ensuring consistency with other sections of the river where the use of bait is allowed.

Southwest:

There are 14 proposals in the Southwest Zone, all categorized as simplification regulations. The proposed changes include expanded seasons for Chinook salmon in the Smith, South Fork Coquille River, and Pistol Rivers. Proposals also include expanded seasons for hatchery steelhead in the South Fork Coos River, East and West Fork Millicoma, South and East Fork Coquille River and in Ten Mile Creek.

Additionally there are a few proposals to remove the current open seasons for Chinook that are in place from January 1 to April 30 in the North Fork and South Fork Coquille River, to protect returning wild spring Chinook salmon.

There are two housekeeping corrections on the Rogue River to modify gear regulations restrictions. From the mouth to Cole Rivers Hatchery Dam there was an unintentional restrictive regulation requiring the use of one single point hook. The proposed change will revert back to previous regulations.

Willamette Zone:

There is one proposal in the Willamette Zone that will allow the use of bait when fishing in Muddy Creek and the tributaries of Muddy Creek. By allowing the use of bait during the harvest season this will provide better opportunities for family fishing in this waterbody.

Central Zone:

There are three proposals for the Central Zone. Of these, two are categorized as housekeeping corrections and one as a new non-controversial angling opportunity. Currently a section of the Metolius Arm of Lake Billy Chinook is a closed to all angling. There is a proposal to remove the distances that designate this area and instead define this area with permanently affixed markers. This proposal was developed jointly with the Confederated Tribes of Warm Springs who will be making the same modification in the Tribal angling regulations. A clarification is also needed in the Wickiup Reservoir, Deschutes River Arm to designate where the Reservoir ends and the river section begins.

With the completion of the new Metolius Pond near Camp Sherman, new regulations are needed. This pond will be designated as a youth and

disabled angler only opportunity. Anglers will be able to harvest two fish per day.

Northeast Zone:

There was one proposal for the Northeast zone to combine the river sections in the Imnaha River, to simplify the regulations.

Southeast Zone:

There were no proposals submitted in the Southeast Zone.

Snake River Zone:

There were no proposals submitted in the Snake River Zone.

Columbia River Zone:

There are 17 proposals submitted for the Columbia River Zone of these 16 were categorized as simplification and one as a housekeeping correction. The majority of proposals are focused on the mainstem Columbia to provided consistency with Washington, and informing the public to check the myodfw.com website for the latest regulation updates.

Marine Zone:

There were no proposals submitted for the Marine Zone.

In closing, as staff continues to further synthesize the regulations into the new layout with the publisher there may be changes that are currently unknown to address clarity and consistency. Staff proposes that the Commission authorize staff to make formatting changes, to correct spelling or grammar errors, address inadvertent inconsistencies to improve the overall readability, and update information regarding the Electronic licensing system as needed.

OPTIONS

1. Accept the proposed regulation changes.
2. Modify the proposed regulation changes.
3. Reject the proposed regulation changes.

**STAFF
RECOMMENDATION**

Accept the proposed regulation changes as recommended by staff.

DRAFT MOTION	I move to adopt the 2019 Oregon Sport Fishing Regulations as proposed by staff in Attachment 4 and authorize staff to make formatting changes, to correct spelling or grammar errors, address inadvertent inconsistencies, improve readability, and update information regarding the Electronic Licensing System as needed.
EFFECTIVE DATE	January 1, 2019

PETITION TO AMEND THE OREGON SPORTFISHING REGULATIONS FOR THE SOUTHWEST ZONE TO REQUIRE THE RELEASE OF WILD STEELHEAD**ANALYSIS**

In accordance with ORS 183.390(3), the following factors must be considered by the Commission when determining whether to accept the petition and initiate rulemaking or to deny the petition:

- The continued need for the rule;
- The nature of complaints or comments received concerning the rule from the public;
- The complexity of the rule;
- The extent to which the rule overlaps, duplicates or conflicts with other state or federal regulations and, to the extent feasible, with local government regulations;
- The degree to which technology, economic conditions or other factors have changed in the subject area affected by the rule; and
- The statutory citation or legal basis for the rule

For the Commission's consideration, Staff provides the following information related to each of these six factors:

1. The continued need for the rule.

Current regulations allow for a limited harvest opportunity for wild steelhead in select streams of the Southwest Zone. The select streams are the mainstem East Fork Coquille, Illinois, Chetco, Elk, Pistol, Rogue, Sixes and Winchuck rivers and Hunter and Euchre creeks. No more than a total of 1 per day and 5 per year wild steelhead may be taken zone wide, except for the East Fork Coquille River, where 1 per day and 3 per year are allowed. Of approximately 5,800 miles of adult steelhead habitat in the Southwest Zone, about 7% (405 miles) are open to wild harvest. In addition, there are no commercial fisheries associated with Southwest zone steelhead.

Based on a 2013 public opinion survey commissioned by ODFW and conducted by Oregon State University during development of the *Coastal Multi-Species Conservation and Management Plan* (CMP), we know that the majority of anglers and the general public support the harvest of wild salmon and steelhead in coastal watersheds when it will not jeopardize the health of the population. The survey showed that 69% of the general public and 68% of the anglers agreed that the CMP should provide opportunities to harvest wild fish when it doesn't risk population health. Providing such opportunities when they are consistent with conservation of wild populations aligns with ODFW's mission to protect and enhance Oregon's fish and wildlife and their habitats for use and enjoyment by

present and future generations and is consistent with the Native Fish Conservation Policy (NFCP; OAR 635-007-0502 through 0509). This policy was developed to ensure “that, consistent with native fish conservation, opportunities for fisheries and other societal resource uses are not unnecessarily constrained”.

The existing conservative harvest regulations provide a limited opportunity that is consistent with the conservation status and needs of Southwest Zone steelhead populations. Steelhead in the Southwest Zone are not listed under the federal Endangered Species Act or on Oregon’s Threatened, Endangered or Candidate Species list; neither agency considers a change in status warranted at this time.

ODFW evaluated the status of all steelhead populations in the northern half of the Southwest Zone in the CMP, which was approved by the Commission in 2014. In that evaluation, all populations of summer-run and winter-run steelhead, including those in the Umpqua, Coos, Coquille, Floras, and Sixes were determined to be viable. This status assessment led to the removal of Coastal Winter Steelhead from Oregon’s List of Sensitive Species (OAR 635-100-0040) and provided the foundation for the CMP’s portfolio approach, where different management strategies (including harvest options) occur in different locations, to managing conservation risk and fishing opportunity.

Based on the most recent data available, staff have concluded there is no impending conservation concern for Southwest Zone steelhead populations. In the northern half of the Southwest Zone, spawning ground surveys across the Oregon coast show a stable trend in steelhead redd abundances despite the decline in 2017. Likewise, counts of steelhead at Winchester Dam (North Umpqua) are consistent with the most the recent CMP status review.

Similarly, adult abundance data in the southern half of the Southwest Zone support the most recent status assessments. Spawning ground surveys in the South Coast management area (excludes the Rogue) showed no discernable trend in redd abundance between 2003 and 2015. In the Rogue Basin, annual counts of adult unmarked winter steelhead at Gold Ray Dam met the population health goal in 63 of 68 years between 1943 and 2010, at which point the dam and counting station were removed. It is notable that three of the highest counts in the wild winter steelhead record at Gold Ray Dam occurred under the existing regulatory framework. Abundance estimates at Huntley Park (lower Rogue) also indicate recent increases of steelhead half-pounders (predominantly summer steelhead), and adult wild summer steelhead are approaching population health goals.

Monitoring of juvenile steelhead occurs throughout Southwest Zone. Site occupancy during snorkel surveys has generally achieved the annual population health goal of juvenile steelhead presence in at least 80% of surveyed sites. Together, these data suggest stable populations that have

been resilient to recent challenging environmental conditions and can support the limited harvest opportunity provided by the existing harvest framework.

As noted previously, the current angling regulations are very conservative. Additionally, there are regulations in place to protect wild summer steelhead in the Rogue Basin, the more sensitive of the two runs. These include:

- Summer steelhead may not be harvested in the Rogue River. The limited opportunity to harvest wild winter steelhead includes a 24-inch length limit as an additional protection for summer steelhead, which are typically smaller than 24 inches.
- All Rogue tributaries are closed to fishing unless listed in the special regulations. Within the range of steelhead, anglers may only fish the Applegate River, the Illinois River below Pomeroy Dam, Upper Little Butte Creek, and Upper Big Butte Creek.
- Except on upper Big Butte Creek, wild trout (including juvenile steelhead) may not be harvested in the Rogue watershed.
- To protect smolts, the mainstem Rogue River is closed to angling for trout in April and May, and the Applegate and Illinois Rivers are closed to fishing in April and May.

Southwest Zone steelhead populations have persisted and even thrived for many generations while being harvested under regulations much more liberal than the current framework. Data collected from combined angling tag indicates that very few anglers actually harvest up to the annual limits. An analysis of the combined angling tags from the Rogue River (2004-2015) shows that in almost every year, 90% of the anglers have reported harvesting between 0 and 2 wild winter steelhead annually. Less than 2 percent of anglers have reported harvesting the 5 winter steelhead during this 12 year period. The average number of wild steelhead harvest annually over this time period is approximately 325 fish. Due to this relatively low harvest, if the current regulations were changed to allow for catch-and-release only, this would not significantly increase angler interactions with wild winter steelhead or significantly increase the freshwater productivity of the species.

2. The nature of complaints or comments received concerning the rule from the public

ODFW requested public comment upon the Petitioner's proposed rule, and specifically public comment on whether options exist for achieving the rule's substantive goals in a way that reduces the negative economic impact on businesses.

On August 22, 2018, ODFW received a document entitled "Document in support of the Leonard Krug Petition to 'Maintain Current ODFW Wild

Winter Steelhead Regulations To Continue to Allow Harvest of Wild Winter Steelhead in All of Oregon Southwest Zone Coastal Streams.”

DOJ has determined that this submission does not meet the requirements of an APA petition for rulemaking; however, it may be considered as part of the public comment on the Petition received on August 9th because it relates to the same rule. This submission is included in your packet and states:

“This is to counter any petition or momentum to consider limiting harvest of unmarked (wild) Winter Steelhead in Oregon’s Southwest Streams. ODFW has historically maintained that there is no biological reason to limit harvest of wild winter steelhead in Southwest streams. We feel that any change to current regulations will negatively impact Oregon’s adult and youth licensed anglers.”

This counter proposal requesting that the current SW Zone Sportfishing regulations be maintained includes over 500 signatures from members of the public, letters from the Jackson County, Coos County, and Tillamook County Board of Commissioners, and letters from the mayors of Port Orford, Bandon, Brookings, and Gold Beach.

3. The complexity of the rule

The current regulation allows for the harvest of 1 wild winter steelhead per day and 5 per year in the Illinois, Chetco, Elk, Pistol, Rogue, Sixes, and Winchuck Rivers and in Hunter and Euchre Creeks. In 2018, harvest of 1 per day and 3 per year was instituted the East Fork Coquille River, as was determined through the CMP adopted by the Commission in 2014.

ODFW finds that this rule is not overly complex. The rule appropriately balances conservation and opportunity, and is enforceable by Oregon State Police.

4. The extent to which the rule overlaps, duplicates or conflicts with other state or federal regulations and, to the extent feasible, with local government regulations;

Steelhead in the Southwest Zone are not listed under the Federal Endangered Species Act, therefore there is no federal regulations applicable to these populations. Additionally, the recent ODFW status assessment led to the removal of Coastal Winter Steelhead from Oregon’s List of Sensitive Species (OAR 635-100-0040) and provided the foundation for the CMP’s portfolio approach, where different management strategies (including harvest options) occur in different locations, to managing conservation risk and fishing opportunity.

5. The degree to which technology, economic conditions or other factors have changed in the subject area affected by the rule.

Steelhead populations in the Southwest Zone are limited by environmental conditions, not harvest. No recent status assessments have identified harvest as a primary or secondary limiting factor for any steelhead populations in the Southwest Zone. Rather, these populations are limited by habitat access and quality (e.g., passage, sedimentation, instream structure, water quantity), water quality (e.g., temperature), and in some cases predation by non-native fishes. ODFW expects that the abundance of these populations will continue to primarily be driven by changes in habitat and environmental conditions and will not be significantly affected by the limited harvest opportunities provided by the existing regulatory framework. ODFW and others are already taking substantial actions to address limiting factors for steelhead throughout the Southwest Zone, including implementation of fishery enhancement requirements at U.S. Army Corps of Engineers dams in the Rogue basin and significant investments in the habitat restoration and fish passage improvements that will be essential to enhance population resiliency under extreme environmental conditions.

Recent droughts and volatile ocean conditions have affected salmon and steelhead populations across Oregon and the west coast. Populations of salmon and steelhead naturally fluctuate with environmental conditions; steelhead populations in the Southwest Zone are not unique in this regard. Throughout the Pacific Northwest, recent weather and climatic conditions have negatively impacted freshwater salmon and steelhead during spawning and rearing (e.g., successive droughts; some of the warmest summer conditions on record) and ocean residence (e.g., El Niño; “The Blob” warm water anomaly). Salmon and steelhead populations across Oregon have responded to these conditions; recent lower abundances of steelhead spawners and juvenile steelhead in the Southwest Zone are consistent with populations elsewhere. Despite these poor conditions, it is notable that recent returns to the Rogue River are generally higher than those observed during the last multi-year drought and large El Niño in the early 1990s, and the count of late-run wild Summer Steelhead in 2017 had climbed to just below population health goal.

Eliminating harvest of wild steelhead is unlikely to result in larger fish in the Rogue River. Rogue River steelhead are unique in Oregon. Within 3-5 months of going to sea as a smolts, roughly 95% of Rogue River Summer Steelhead and 30% of winter steelhead turn around and swim back upriver to feed late summer through winter, before heading back to sea for another year or two prior to spawning. The Rogue is the only river in Oregon that has this “half pounder” life history stage (also observed in rivers of Northern California). This trait adds to a wide variety of life history patterns seen in Rogue Steelhead, diversity that contributes to population resiliency despite environmental extremes.

The half-pounder life history also contributes to generally smaller sizes of Rogue steelhead. ODFW research in over many decades concluded that the half-pounder life history results in a shorter period of ocean residency

such that adult summer steelhead returning to the Rogue River are typically smaller than their counterparts in other streams. Previous research by ODFW reached a similar conclusion for Rogue Winter Steelhead. A tendency toward smaller size for adult Rogue Winter Steelhead has been documented since the Oregon State Game Commission began studying Rogue Steelhead in the 1950's and is attributable to the shorter ocean residency, and variations in life history patterns, not size-selective harvest occurring under existing regulations.

6. The statutory citation or legal basis of the rule

The legal basis for the current rule is still relevant. None of the populations the Southwest Zone are in peril or need specific protections by removing the current harvest opportunity which is structured to protect sensitive life history stages and run-timings.

Staff believes that there is no compelling evidence to warrant a change to the current regulation and unnecessarily restrict this unique harvest opportunity. All indications show that there is not a conservation concern.

- Anglers and the general public overwhelmingly support opportunities to harvest wild steelhead.
- Current regulations allow for a unique and limited harvest opportunity to retain wild winter steelhead in select streams of the Southwest Zone is consistent with the conservation status and needs of Southwest Zone steelhead populations.
- Anglers infrequently harvest more than 2 wild winter steelhead annually, according to combined angling tag analysis.
- ODFW evaluations of the current status of wild steelhead populations in the Southwest Zone led to the removal of wild coastal winter steelhead from the States sensitive species list.
- Spawning ground surveys show a stable trend in steelhead abundance across the Southwest Zone.
- Juvenile surveys indicated that the populations are stable despite recent challenging environmental conditions.
- The limiting factors for wild winter steelhead in the Southwest Zone are habitat access and habitat quality, not harvest, and significant investments are ongoing through the Zone to address these factors.
- Steelhead in the Southwest Zone are not listed under the federal Endangered Species Act or on Oregon's Threatened, Endangered or Candidate Species list; neither agency considers a change in status warranted at this time.

Based on the above analysis, staff recommends that the Commission deny the current petition and direct staff to develop a multi-species conservation plan as per the Native Fish Conservation Policy for the Rogue and South Coast watersheds. Our past experience developing and

implementing conservation plans has demonstrated that this approach allows a much better opportunity for public involvement, better analyses of all available scientific information, while allowing for full consideration of the petition.

OPTIONS

1. Deny the petition and maintain current regulations as described in the Sportfishing Regulations. Direct staff to develop a multi-species conservation plan for the Rogue and South Coast.
2. Accept the petition and direct staff to initiate rulemaking on the concept proposed by the Petitioners.

**STAFF
RECOMMENDATION**

Option 1. Deny the petition and maintain current regulations as described in the Sportfishing Regulations. Direct staff to develop a multi-species conservation plan for the Rogue and South Coast.

DRAFT MOTION

I move to deny the petition and maintain current regulations as described in the 2018 Sportfishing Regulations and direct staff to develop a multi-species conservation plan for the Rogue and South Coast.

EFFECTIVE DATE

NA