

Petition to Oregon Fish and Wildlife Commission  
 Amendments to Oregon Sport Fishing Regulations - Wild Steelhead, Southwest Zone  
 Updates to Oregon Department of Justice Response (Dated June 29, 2018) - #9035603

**Petition Language to Promulgate, Amend or Repeal Rule for Sport Fishing Regulations**

**Oregon Administrative Rule 137-001-0070 was adopted by the Attorney General as required by ORS 183.390, and allows an interested person to petition an agency or adopt, amend, or repeal a rule.**

**1) An interested person may petition an agency to adopt, amend, or repeal a rule. The petition shall state the name and address of the petitioner and any other person known to the petitioner to be interested in the rule.**

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**The petition shall be legible, signed by or on behalf of the petitioner, and shall contain a detailed statement of:**

**a) The petition requests the Oregon Department of Fish and Wildlife to amend the Sport Fishing Regulations:**

We request the Oregon Department of Fish and Wildlife to amend the Sport Fishing Regulations for the Southwest Zone to require the release of all wild steelhead. The Southwest Zone includes all waters draining directly to the Pacific Ocean from the Umpqua River south to the Oregon-California border, the Umpqua River drainage, and those portions of Klamath River drainage in Jackson County.

*Current Language:*

Southwest Zone Regulations – Salmon and Steelhead: Only hatchery steelhead may be kept, except as noted under Exceptions for the mainstem East Fork Coquille River, Illinois, Chetco, Elk, Pistol, Rogue, Sixes and Winchuck rivers and Hunter and Euchre creeks.

*Proposed Amended Language:*

Southwest Zone Regulations – Salmon and Steelhead: Only hatchery steelhead may be kept, ~~except as noted under Exceptions for the mainstem East Fork Coquille River, Illinois, Chetco, Elk, Pistol, Rogue, Sixes and Winchuck rivers and Hunter and Euchre creeks.~~ Harvest of wild steelhead is prohibited in the Southwest Zone.

**(b) Facts or arguments in sufficient detail to show the reasons for and effects of adoption, amendment, or repeal of the rule;**

**Simplicity and consistency.** Current Sport Fishing Regulations restrict harvest of wild steelhead in some of the Southwest Zone rivers, while allowing wild steelhead harvest in other Southwest Zone rivers. See pages 34 – 39 in ODFW’s 2018 Sport Fishing Regulations. With the amended regulation change, Oregon’s management of steelhead fisheries will be consistent with wild steelhead angling regulations in the entire Southwest Zone as well as Oregon’s Willamette, Central, and Northeast Zones, and all but two rivers in the Northwest Zone (Salmon River and Big Elk Creek); as well as wild steelhead fishing regulations for every river in California, Idaho, Washington, Alaska, and British Columbia.

**Increased angling opportunity for wild steelhead.** Since wild steelhead can be caught multiple times in the same season, or when they return in future seasons to spawn, releasing wild steelhead provides more angling opportunity by keeping wild steelhead in the system.

**Sport fishing is the lifeblood of Southwest Oregon.** Anglers live in Southwest Oregon and travel from across the country for the opportunity to catch a large, wild steelhead, while spending money in the local, rural economy. Maintaining Southwest Oregon as a world-class wild steelhead fishery will help local businesses in the rural area thrive into the future. It is important that we do our part to keep wild steelhead and anglers coming back to the premier rivers in Southwest Oregon and ensure that fishing opportunity remains for future generations.

**More steelhead anglers will be able to participate in the fishery.** Keeping wild steelhead in the river, rather than in the possession of the first angler that harvests it, will increase overall catch rates for anglers, and increase satisfaction with the fishery. In turn, this will encourage more steelhead anglers to participate in the fishery. This will also increase license sales, as more people will have the opportunity to catch wild steelhead and continue to be drawn to fish in Southwest Oregon.

**Size Matters.** Harvesting wild steelhead removes large steelhead from the river and gene pool. Since wild steelhead harvest was removed on the Umpqua River, anglers have reported catching larger fish and guides are seeing renewed traffic to that system, which attracts customers from outside the area who spend money at local businesses. These larger fish often contribute disproportionately to the spawning population, as larger fish are often repeat spawners carrying more gametes than their smaller counterparts.

**This regulation will prevent a piecemeal approach for regional changes.** The amended regulation to release wild steelhead in all Southwest Zone rivers is intended to be uniform across the region. A harvest closure in one system would likely result in an angler effort shift in harvest to a neighboring river where harvest opportunity is still allowed. We saw this when California’s Smith River restricted wild steelhead harvest in 2010 and anglers traveled north to Southern Oregon to harvest wild steelhead.

**Steelhead fishing has been really tough the last couple of years.** Multiple years of drought and tough ocean conditions have resulted in a perceived decline with lower than normal returns and

reduced catch rates over the last couple years. The recent largescale habitat disturbance resulting from the Chetco Bar Fire coupled with liberal harvest regulations further threatens future wild steelhead abundance. The current status of the Southwest Zone's wild steelhead is not well understood and monitoring wild steelhead is costly and logistically difficult since steelhead do not die after spawning. Finally, there is currently no Steelhead Conservation and Management Plan for the Southwest Zone and the state's Native Fish Status Report has not been updated in almost 15 years. Whereas, several Oregon steelhead populations outside the Southwest Zone are listed on ODFW's sensitive species of concern, taking a precautionary approach to ensure wild steelhead thrive into the future, well before populations collapse, is needed.

**(c) All propositions of law to be asserted by petitioner.**

Native Fish Conservation Policy (635-007-0502) - The purpose of this policy is to ensure the conservation and recovery of native fish in Oregon.

Native Fish Conservation Policy Goals (635-007-0503) –

(i) Prevent the serious depletion of any native fish species by protecting natural ecological communities, conserving genetic resources, managing consumptive and non-consumptive fisheries, and using hatcheries responsibly so that naturally produced native fish are sustainable.

(ii) Maintain and restore naturally produced native fish species, taking full advantage of the productive capacity of natural habitats, in order to provide substantial ecological, economic, and cultural benefits to the citizens of Oregon.

(iii) Foster and sustain opportunities for sport, commercial, and tribal fishers consistent with the conservation of naturally produced native fish and responsible use of hatcheries.

**(2) If the petitioner requests the amendment or repeal of an existing rule, the petition must also contain comments on:**

**(a) Options for achieving the existing rule's substantive goals while reducing the negative economic impact on businesses;**

Harvest is a management activity that can result in fishing related mortality, and direct in-river fisheries with a lack of understanding of current population status can result in over harvest with low populations of returning fish. Low returns of fish can act as a constraint on fisheries. Constraints on fisheries negatively impact local businesses by decreasing the number of anglers who participate in the fishery, thereby also reducing their spending in the local economy.

Sportfishing is the lifeblood of the rural economy in Southwest Oregon and maintaining healthy runs of wild steelhead is vital to bringing these important dollars to local businesses, particularly

during the winter months when wild winter steelhead provide the foundation of the coastal fishery.

The proposed regulation will ensure that freshwater sportfishing harvest is not a constraint on fisheries, and help ensure that the wild steelhead populations in Southwest Oregon remain healthy for future generations. Catch and release wild steelhead angling regulations have been in place in British Columbia, Alaska, and Idaho since the 1980s, in California since 2010, and Washington since 2015, and these fisheries remain premier wild steelhead fishing destinations that draw anglers from across the world. It is unlikely that prolonged negative impacts on businesses will occur from catch and release regulations, and more likely that depressed steelhead runs will result in constraints on fisheries that will negatively impact local businesses.

**(b) The continued need for the existing rule;**

The existing rule is intended to provide harvest opportunity for sport anglers in the Southwest Zone.

**(d) The extent to which the existing rule overlaps, duplicates, or conflicts with other state or federal rules and with local government regulations; and**

Six distinct population segments (DPSs) of steelhead trout have been identified in Oregon by NOAA Fisheries and ODFW. Four of the DPSs are listed as threatened under the federal Endangered Species Act. The Southwest Zone includes the remaining two population segments that are not listed on the federal Endangered Species Act, but they are on the Forest Service Region 6 Special Status Species list as “sensitive species” of environmental concern, which include the Klamath Mountain Province (KMP) Steelhead DPS and the Oregon Coast Steelhead DPS. For sensitive species, the policy objectives are to “ensure that actions do not contribute to a loss of viability or cause a significant trend toward listing under the ESA” (FSM 2670.32, 2015).

The Klamath Mountain Province (KMP) steelhead DPS in Oregon includes all of the coastal rivers from Cape Blanco south to the California border, including the Elk, Rogue, Illinois, Applegate, Chetco, and Winchuck rivers, and Hunter and Euchre creeks. The Oregon Coast Steelhead DPS in the Southwest Zone includes the Sixes, Coquille, and Umpqua rivers, as well as all rivers draining into the Pacific north of the Umpqua system.

A National Marine Fisheries Service status review for KMP steelhead (See Busby et al. 1994) concluded that KMP steelhead “is not now at risk of extinction, but if present trends continue, it is likely to become so in the foreseeable future”; however an ODFW evaluation concluded that summer steelhead populations were depressed but winter steelhead populations were healthy. Based on these findings, ODFW noted “there was a deferral of the proposed ESA listing and Oregon agreed to terminate winter steelhead harvest in KMP streams (except the Rogue River Basin remained open) and to improve population assessments” (See ODFW’s Klamath Mountain

Province Steelhead Project). However, KMP steelhead did remain a candidate species during 2000 (Satterthwaite, 2003).

Assessments of Western Oregon Adult Winter Steelhead populations have been conducted by ODFW as part of the Oregon Plan for Salmon and Watersheds since 2003. The project is “designed to assess the yearly status and trend, presence of hatchery fish, and distribution of winter steelhead spawners in six coastal Monitoring Areas (MA) in two Distinct Population Segments (DPS)” (Suring E. and M. Lewis, ODFW, 2008). These assessments have been conducted in the Southwest Zone and include the two Distinct Population Segments, KMP DPS and Oregon Coast DPS, with a focus on four Management Areas in the Southwest Zone including the South Coast, Rogue, Mid-South Coast, and Umpqua.

For the KMP DPS: No surveys have been conducted in the Rogue MA since 2009 due to budget constraints, and steelhead monitoring in the South Coast MA has not been conducted since 2015. In addition, the 2015 report, the last year of survey collection for the South Coast MA states “Estimates in the KMP DPS were the lowest recorded since monitoring began in 2003” (Jacobson *et al.*, 2015).

For the Oregon Coast DPS: Steelhead spawning survey effort has been dramatically reduced on the Oregon Coast since 2008 due to budget constraints, resulting in not meeting precision goals at most spatial monitoring scales. Surveys were conducted in 2017, and winter steelhead estimates were less than 50% for both the 5 year and 10 year averages for the Oregon Coast DPS. Specific to the Mid South Coast and Umpqua MAs, wild winter steelhead redds were below average since monitoring began in 2003 with Mid-South Coast (49%) and Umpqua (47%) (Jacobson *et al.*, 2015). Finally, ODFW notes “The relatively short time period of monitoring and the reduced effort in recent years (and thus generally larger 95% confidence intervals) currently limit the ability to detect long-term trends in abundance” (Jacobson *et al.*, 2015).

Reports from ODFW for Southwest Zone wild steelhead abundance show decreasing population trends, and likely indicate that the populations are depressed warranting management objectives that should be designed to minimize fishing mortality.

Given the lack of current monitoring data and previously identified downward trends in abundance, we are requesting ODFW to implement simple, consistent sport fishing regulations to protect these populations *before* the population crashes. Conversely, other rivers across the state and Northwest have management actions that are constrained by having to manage for the recovery of wild stocks after population crashes. Proactive conservation measures that still maintain fishing opportunity will also help protect the population from swings in status and help reduce the impacts of long-term highs and lows in productivity due to weather and ocean cycles; maintain life history, genetic diversity, and species distribution; and limit hatchery impacts on genetics and productivity of wild populations.

**(e) The degree to which technology, economic conditions, or other factors have changed in the subject area affected by the existing rule, since the agency adopted the rule.**

The last comprehensive status review of native fish populations in Oregon was in 2005 (see ODFW, Native Fish Status Report, 2005). To date, there has not been a comprehensive review of wild steelhead status in the Southwest Zone, despite multiple years of chaotic environmental conditions, including drought, El Niño, year-after-year record setting warm air temperatures, and the Blob of hot water in the Pacific Ocean.

Wild steelhead populations are trending downward in the majority of systems in Oregon, Washington, California, Idaho, and British Columbia. There are only a couple of areas left in the Pacific Northwest where wild steelhead are considered relatively stable, yet in every watershed outside of Oregon where steelhead angling is permitted fisheries managers have implemented catch and release regulations for wild steelhead to protect these important stocks.

As fisheries are constrained across the Northwest and anglers seek out the last remaining healthy populations of wild steelhead, an angler effort shift to the Southwest Zone is likely, and potentially already occurring, it is important to implement proactive regulations to help protect these populations in the future.

Enumerating steelhead abundance is critical for managing run strength, stock composition, and fisheries, but we recognize accomplishing this can be incredibly difficult, particularly in large river systems that occur in the Southwest Zone. Several techniques such as sonar, mark-recapture experiments, or traditional weirs/barriers could be used to estimate steelhead abundance, but these techniques are often expensive, time consuming, can adversely impact returning fish runs, and can have a significant amount of error associated with the estimate. Monitoring steelhead is also notoriously difficult because they have the most variable suite of life histories, which greatly complicates assessment and management.

Population health goals for the KMP steelhead DPS in the Southwest Zone steelhead were established by ODFW in 2003 (Satterthwaite, 2003). The report indicated that attainment of the goals would lead to fish managers to conclude that KMP populations are healthy, but due to budget constraints ODFW has not had the resources necessary to complete the ongoing monitoring to understand wild steelhead status in relation to population goals.

Given the increasingly list of critical species ODFW is working to recover across the state, and the decrease in funding available to the department for monitoring (as seen in the dramatic reduction in monitoring by ODFW for coastal steelhead spawning surveys), in order for the department to fulfill its responsibilities under the Native Fish Conservation Policy and prevent the trend towards a federal Endangered Species Act listing, it is in the best interest of the agency, anglers, local businesses, and Oregonians to limit the impacts to sensitive fish populations in the case of uncertainty and help ensure that the Southwest Zone wild steelhead populations sustain robust recreational fisheries now and in the future.

Implementing catch and release regulations for wild steelhead in the Southwest Zone in the face of these uncertainties is the most cost-effective, equitable, and easy to implement management action to protect these important world-class populations.

**References:**

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