

Agenda Item Summary

BACKGROUND

On November 7, 2019, ODFW received a document entitled “Request for Temporary Rule Change to Oregon Sport Fishing Regulations affecting wild winter steelhead harvest in the Southwest Zone for the year 2020” from five members of the public (Attachment 2). This petition requested the Commission adopt a temporary regulation to prohibit the harvest of wild steelhead in the Southwest Zone in 2020. The submitted petition qualifies as a valid petition under the Administrative Procedures Act (APA), and staff now asks the Commission to rule on the petition. Under the State APA, the Commission is required to either deny the petition in writing or initiate rulemaking proceedings within 90 days after the date of submission of a petition, which is February 5, 2020 in this instance.

A similar petition requesting the permanent prohibition of wild steelhead harvest in the Southwest Zone was received in August 2018. The Commission denied this petition, but did lower wild steelhead harvest limits throughout the Southwest Zone to 1 per day and 3 per year (making this consistent with wild steelhead harvest on the rest of the coast) and also directed staff to address permanent harvest regulations for wild steelhead in the Rogue and South Coast species management unit through the development of a conservation plan. This plan, which will include a comprehensive assessment of multiple species and management direction for them, is currently being developed (described in more detail below).

PUBLIC INVOLVEMENT

At this time, the Commission requests public comment on the petition’s proposed amended rule (a temporary rule) generally and specifically on whether options exist for achieving this regulation’s substantive goals in a way that reduces negative economic impact on businesses.

Members of the public have the opportunity to view the petition and staff summaries on the Department website. A press release has also been issued prior to the Commission meeting to inform the public on a pending petition and the nature of the proposed rule changes.

ODFW has received comments in support and opposition to the petition and the rule it addresses (Attachment 3). Members of the public also spoke to this petition in the Public Forum portion of the Commission meeting on December 6, 2019.

ISSUE 1

PETITION TO TEMPORARILY AMEND THE OREGON SPORTFISHING REGULATIONS FOR THE SOUTHWEST ZONE TO PROHIBIT THE HARVEST OF WILD STEELHEAD

ANALYSIS

In accordance with ORS 183.390(3), the following factors must be considered by the Commission when determining whether to 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 rules 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 winter 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. Effective January 1, 2019, harvest limits for wild steelhead were decreased zone-wide from 1 per day and 5 per year to 1 per day and 3 per year.

Development of a conservation plan

As directed by the Commission in 2018, ODFW staff started work to develop a Rogue-South Coast conservation and management plan (RSP), covering steelhead, coho salmon, and cutthroat trout in the southern half of the Southwest zone. Significant progress on development of this plan has been made. ODFW is completing numerous assessments and summaries and is poised to move into the next phase of plan development: coordination with external partners and stakeholders. The harvest of wild winter steelhead will be a primary focus within this process. ODFW plans to present the final plan to the Commission for approval by the end of 2020.

Harvest protections in place

The existing harvest regulations provide a conservative, limited opportunity that is consistent with the conservation status and needs of Southwest Zone steelhead populations. Of approximately 5,800 miles of adult steelhead habitat in the Southwest Zone, only about 7% (405 miles) are open to wild harvest. In addition, there are no commercial fisheries associated with Southwest Zone steelhead.

Southwest Zone steelhead populations have persisted and even thrived for many generations while being harvested under regulations much more liberal than the current framework. The current harvest regulation for wild steelhead in the Southwest Zone is conservative, aligned with status assessments, and expected to result in relatively low harvest rates.

- Data collected from combined angling tags indicate 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.
- For populations covered under the RSP, stratum-level harvest rate estimates based on angler harvest cards and spawning ground surveys indicate that harvest rates were relatively low in years when stratum-level abundance estimates were available (average = ~10% for the coastal stratum, 2005-2015, and ~5% for the Rogue stratum, 2005-2009).
- Estimates of harvest rates in the East Fork Coquille and Sixes River (covered by the CMP) have averaged approximately 1% and 9%, respectively, since adoption of the plan (2015-2018). Harvest of wild steelhead has only been allowed since 2018 in the East Fork Coquille.

Steelhead in the Sixes River have sustained harvest under regulations more liberal than the current framework. However, to address uncertainties in abundance and harvest trajectories, ODFW has re-allocated resources to monitor harvest and abundance in the Sixes population through angler creel and spawning ground surveys, respectively. This monitoring will begin in January 2020.

It is also notable that in the Rogue basin there are several regulations in place to protect wild steelhead, along with additional protection for summer steelhead (which is 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.

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 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 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.

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 competition or 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.

No indication of an impending crisis in 2020

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 ODFW or NOAA consider a change in status warranted at this time. Winter Steelhead in the Southwest Zone are also not listed on Oregon’s List of Sensitive Species (OAR 635-100-0040; https://www.dfw.state.or.us/wildlife/diversity/species/docs/2017_Sensitive_Species_List.pdf).

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, Tenmile Lakes, 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 to managing conservation risk and fishing opportunity, where different management strategies (including harvest options) occur in different locations.

The first phase of RSP development was assessment of current status. RSP status assessments were recently completed, and all winter steelhead populations were determined to be viable. Like the CMP status assessments, the RSP status assessments used a weight-of-evidence approach utilizing all available data and the most appropriate scientific methods. Status conclusions reflect the preponderance of the information and confidence in analytical assessments, and, although some metrics conveyed risk, the information as a whole is positive and does not provide compelling evidence to warrant a change to the current regulation and further restriction of this unique harvest opportunity at this time. Given that the RSP is still under development, these status assessments remain in draft form but will be presented and available (as drafts) once external plan development stages commence in early 2020.

Recent droughts and volatile ocean conditions have affected salmon and steelhead populations across Oregon and the Northwest. Populations of salmon and steelhead naturally fluctuate with environmental conditions; steelhead populations in the Southwest Zone are not unique in this regard. However, recent declines in other salmon populations, or steelhead populations outside of the Southwest Zone, are not expected to predict the performance of Southwest Zone steelhead populations. For example, recent returns of Rogue hatchery steelhead have been good (meeting mitigation objectives), but returns of Rogue hatchery spring Chinook salmon have been poor (not meeting mitigation objectives). The abundance of Chinook salmon on the Rogue declined in 2019, but both populations remained above levels that trigger conservation concern in 2019. These declines do not necessarily predict an immediate drop in steelhead abundance.

Also important is that the ocean distribution of steelhead populations south of Cape Blanco (e.g., Illinois, Chetco, Elk, Pistol, Rogue, and Winchuck) is different from that of steelhead produced in other Oregon rivers. Steelhead from populations south of Cape Blanco are thought to remain in upwelling zones off of northern California and southern Oregon rather than migrating long distances offshore like steelhead from other regions of Oregon. This difference in ocean rearing distributions means that these populations can experience environmental conditions and survival rates that are different from those of other Oregon steelhead populations. For example, July sea surface temperatures over the past few years have been high (poor) in the subarctic north Pacific, but cooler waters have been more persistent in nearshore areas of southern Oregon and Northern California. There is no evidence that juvenile steelhead entering the ocean in 2018 and returning as 2-salt adults in 2020 experienced especially adverse ocean conditions. This conclusion is also supported by the following:

- Prior to the removal of Gold Ray Dam, counts of half-pounders at Huntley Park were correlated to abundance of adult winter steelhead passing Gold Ray Dam two years later. Recent counts of half pounders do not indicate low returns of adults in 2020.
- Returns of hatchery winter steelhead to Cole Rivers Hatchery and the Applegate trap have been good, but late in recent years. Despite concerns about initially low returns in 2017-2018, over 4,000 hatchery winter steelhead returned to the two collection ponds (data from hatchery collection pond report). The mitigation goal is 2,000.
- In 2018-2019 the total return of winter steelhead (hatchery return plus some wild fish) to the Cole Rivers collection pond was 2,835, the 11th highest return in over 40 years. The total return to Applegate trap was 3,435 winter steelhead, but the return was the latest in 29 years (data from hatchery collection pond report).
- Data for summer steelhead are also encouraging. An estimated 9,236 wild summer steelhead entered the Rogue River in 2019 (Huntley Park seining project). This return is just above average for the period of record (1987-2018) and the 3rd highest in the past decade.

Ocean distributions of populations in the northern portion of the Southwest Zone (North of Cape Blanco) may be more similar to other coastal populations. Information relative to recent performance is available from contemporary monitoring in the North Umpqua and in the CMP's Mid-South Coast Stratum, which is a population aggregate that includes populations in the Coos, Coquille, Floras, and Sixes basins.

- Counts of North Umpqua winter steelhead at Winchester Dam have been generally increasing since the early 1990s, well before the prohibition of wild steelhead harvest in 2008.
- Recent declines in counts at Winchester Dam (2018, 2019), where there is currently no wild harvest, are not surprising given poor conditions in the subarctic Pacific Ocean and in freshwater (e.g., drought), but even these numbers are near average for the 74-year record.
- Spawning ground surveys in the Umpqua and Mid-South Coast strata have provided estimates of redd abundance since 2003. Although there are indications of a negative trend in redd abundance estimates in the Mid-South Coast and Umpqua (below Winchester Dam) strata, estimates have not fallen below stratum-level conservation abundance thresholds identified in the CMP that would trigger harvest closures.

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

To date, ODFW has received comments in support and opposition to the petition and the rule it addresses (Attachment 3). Members of the public also spoke to this petition in the Public Forum portion of the Commission meeting on December 6, 2019.

Most testimony was in favor of the petition, which one of the petitioners indicated has garnered significant online support. However, because the topic was not an agenda item in December, many anglers may not have been aware of the opportunity to comment.

As stated previously, a similar petition was submitted in 2018. This petition also had support, but a counter proposal to maintain wild steelhead harvest was supported by members of the public and numerous local governments (Jackson County, Coos County, Tillamook County, and mayors of Port Orford, Bandon, Brookings, and Gold Beach).

Public opinion surveys show that there is strong support for a conservative harvest opportunity for wild winter steelhead. In a 2013 public opinion survey commissioned by ODFW during development of the *Coastal Multi-Species Conservation and Management Plan (CMP)*, 69% of the general public and 68% of the anglers agreed that the CMP should provide opportunities to harvest wild fish when it does not risk population health. A new angler opinion survey, conducted in 2019 to support development of the RSP, has re-affirmed support for the opportunity to harvest wild winter steelhead with 65% of respondents supportive of continuing the opportunity and fewer than 15% opposed. 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".

Additional comments are also expected to be forthcoming. Prior to the Commission meeting on January 17, 2020, ODFW will post this information and advertise that the Commission requests public comment on the petition's proposed amended rule generally, and specifically on whether options exist for achieving this regulation's substantive goals in a way that reduces negative economic impact on businesses. Members of the public will also be able to testify at the Commission meeting.

3. The complexity of the rule

The current regulation allows for the harvest of 1 wild winter steelhead per day and 3 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 already had been instituted for the East Fork Coquille River, as was determined through the CMP adopted by the Commission in 2014.

The current rule was adopted for consistency across the entire Southwest Zone and ODFW finds that this rule is not overly complex. The rule 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

The current rule does not conflict with other rules or regulations. Steelhead in the Southwest Zone are not listed under the Federal Endangered Species Act. Therefore, there is no federal authority over 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 to managing conservation risk and fishing opportunity, where different management strategies (including harvest options) occur in different locations. Winter Steelhead in the remainder of the Southwest Zone are also not listed on Oregon's List of Sensitive Species (OAR 635-100-0040). Finally, no other state or local government entity has authority to regulate angling in Oregon.

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

Based on comments received, there is a perception that fishing pressure on winter steelhead has increased due to more anglers and better techniques, at least in the southern portion of the Southwest Zone. As indicated in the discussion above for factor #1, this topic will be addressed in the development of the RSP, harvest limits are more conservative than they have been in the past, harvest rates are still within acceptable levels, and monitoring efforts are being shifted to the Sixes River in 2020 to obtain better data on angling effort and catch and the wild population.

In addition, as also indicated in the discussion above for factor #1, changing conditions for portions of the ocean and poor returns for salmon or steelhead in other locations throughout Oregon are not necessarily expected to predict returns for winter steelhead in the Southwest Zone.

6. The statutory citation or legal basis of the rule

The legal basis for the current rule has not changed, and is still relevant. New rules associated with the RSP have not been developed or adopted yet. None of the populations in the Southwest Zone are in peril or need specific protections by removing the current harvest opportunity, which is structured to be conservative and protect sensitive life history stages and run-timings.

Conclusion

Staff believe that there is no compelling evidence to warrant a change to the current regulation and unnecessarily restrict this conservative harvest opportunity. The body of evidence shows that there is not a conservation concern imminent in 2020, prior to completion of the RSP where this issue will be thoroughly reviewed and discussed.

- A conservation plan is under development and winter steelhead harvest opportunity will be specifically addressed in it.
- In scientific surveys, anglers and the general public overwhelmingly support opportunities to harvest wild winter steelhead.
- Current regulations allowing for a limited harvest opportunity for wild winter steelhead in select streams of the Southwest Zone are consistent with the conservation status and needs of Southwest Zone steelhead populations.
- ODFW evaluations of the current status of wild steelhead populations in the north half of the Southwest Zone led to the removal of wild coastal winter steelhead from the States sensitive species list.
- Status assessments for both the CMP and RSP (plan in progress) indicate that all winter steelhead populations in the Southwest Zone are viable.
- 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.
- The limiting factors for wild winter steelhead in the Southwest Zone are habitat access and habitat quality, not harvest, and significant investments are ongoing to address these factors.
- Anglers infrequently harvest more than 2 wild winter steelhead annually, according to combined angling tag analysis.
- There is no indication of imminent poor returns that approach a level of conservation concern for Southwest zone steelhead in 2020.
- Beginning in January 2020, ODFW will have a monitoring crew operating in the Sixes River to better understand abundance and harvest rate trajectories. This work will confirm abundance and harvest rate estimates, and provide an on-the-ground monitoring presence as the run and fishery develop in 2020.

Based on the above analysis, staff recommends that the Commission deny the current petition. There is no indication of an imminent downturn in 2020, and staff will continue to develop a multi-species conservation plan as per the Native Fish Conservation Policy for the Rogue and South Coast species management unit. Our past experience developing and

implementing conservation plans has demonstrated that this approach allows a much better opportunity for public involvement and review of all available scientific information, while allowing for full consideration of issues such as wild winter steelhead harvest.

OPTIONS

1. Deny the petition and maintain current regulations as described in the Sportfishing Regulations.
2. Accept the petition and direct staff to initiate rulemaking on the concept proposed by the Petitioners.

**STAFF
RECOMMENDATION**

Option 1.

DRAFT MOTION

I move to deny the petition and maintain current regulations as described in the Sportfishing Regulations.

EFFECTIVE DATE

NA