



## Backgrounder and Frequently Asked Questions

### Who Sent the Letter?

The 60-day Notice of Intent to File Suit was sent by Conservation Angler, Wild Fish Conservancy, Snake River Waterkeeper, Friends of the Clearwater and Idaho Rivers United.

The Conservation Angler advocates for the protection, scientific study, and conservation of iconic wild anadromous fish populations and the rivers that support them. Our conservation and science programs and advocacy efforts seek to expand the understanding of, and protect and conserve these wild fish and fisheries across the Pacific with the goal of changing salmon management and conservation paradigms.

The Wild Fish Conservancy (WFC) is a nonprofit conservation ecology organization headquartered in Washington State. WFC is dedicated to preserving, protecting and restoring the Northwest's wild fish and the ecosystems they depend on, through science, education and advocacy.

Snake River Waterkeeper<sup>®</sup> is dedicated to protecting water quality and fish habitat. By monitoring water quality, investigating citizen concerns, and demanding enforcement of environmental laws, we aim to ensure future generations a clean and healthy Snake River. Waterkeeper is applying science and law to protect, restore, and sustain waters of the Snake River Basin.

Friends of the Clearwater seek to protect the public lands and watersheds within the Clearwater Basin. Steelhead and other native fish are an integral component of this region.

Idaho Rivers United (IRU) is dedicated to protecting and restoring the rivers and streams of Idaho. A major priority of IRU is the recovery of Idaho's listed salmon and steelhead species.

### What is a Steelhead?

Wild steelhead are a perplexing animal. They are a trout that behaves like a salmon, but belong to the same species as rainbow trout — *Oncorhynchus mykiss* — but they act a lot like a salmon. Steelhead and trout are born in many of the same places, and when members of the *O. mykiss* species stay in freshwater all their lives, then those are the rainbow trout. Steelhead are the anadromous form that migrate into the estuaries and ocean and they become salt-water feeders and migrators. Typically those steelhead that spend more than one year in the ocean get much, much larger than the resident rainbow trout that remain in freshwater rivers.

Like Pacific salmon, steelhead return to the rivers where they were born to spawn. Unlike salmon, however, they don't necessarily die after spawning — many will actually return to the ocean. Also they don't necessarily need to go out to sea to complete their life cycle as some steelhead use the estuary as their primary area to feed and grow, returning to their home rivers after only months in salt-water.

### **What Makes Wild Snake River Summer Steelhead Unique?**

The Snake River Basin steelhead population consists of two different life history forms of steelhead – the “A-run” steelhead, which spend less time in the marine environment and begin their migration up the Columbia River in late spring and is on-going all summer and fall – and the “B-run” steelhead, which typically remain in the ocean for two years before beginning their migration in the mid-summer and continuing through the fall, winter and early spring. Wild “B-run” steelhead have predominantly longer ocean residence and as a result, “B-run” steelhead are generally larger than “A-run” steelhead. The differences in the two components of the Columbia –Snake River Basin steelhead represent an important component of phenotypic and genetic diversity in this “distinct population segment” (DPS). Most Snake River Basin steelhead populations support both “A-run” and “B-run” life history diversity.

In Idaho, wild (intact adipose fin) populations of Snake River Basin steelhead occur in the Clearwater River and its tributaries (Lochsa River drainage, Selway River drainage, and Lower Clearwater tributaries) and in the Salmon River and its tributaries (South Fork Salmon River drainage, Rapid River, Middle Fork Salmon River drainage, and Salmon River tributaries from the mouth to the Middle Fork Salmon River).

### **What is a 60-day Notice of Intent to Sue Letter?**

The Federal Endangered Species Act (ESA) provides for legal review of agency actions by concerned citizens. The ESA requires citizens to give the responsible agencies notice of their intent to seek legal review of ESA action or inaction. The 60-day period provides the action agencies with the opportunity to review their compliance with important federal law and to take action to correct violations or omissions. Concerned citizens may not file a lawsuit until the 60-day period passes.

### **What violation of the ESA is being alleged?**

The Idaho steelhead fishery does not currently have an approved Fishery Management and Evaluation Plan (FMEP) covering this incidental take of wild Snake River Basin steelhead, nor any other authorization or exemption from the ESA take prohibition for this fishery.

The 2017 FMEP for spring/summer Chinook salmon does not cover the incidental take of steelhead, the fall Chinook salmon fishery has no currently approved FMEP for the incidental take of steelhead, and there is no other authorization or exemption from the ESA take prohibition for these fisheries.

In addition, the 2018 Biological Opinion that addresses incidental take of Snake River Basin steelhead in the Columbia River under the management agreement stemming from the United States v. Oregon case does not authorize incidental take of these fish in Idaho.

### **What does the word “Take” mean?**

The ESA prohibits the “take” of a listed species by unauthorized or unpermitted activity. The word is defined in the ESA very broadly: Take means to “harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct.”

### **When were Snake River Summer Steelhead listed?**

National Marine Fisheries Service (now NOAA Fisheries) listed the Snake River Basin steelhead as a threatened species (62 Fed. Reg. 43,937) on August 18, 1997. The threatened status was reaffirmed in 2006 and most recently on April 14, 2014 (79 Fed. Reg. 20,802). Critical habitat for the Snake River steelhead “distinct population segment” (DPS) was designated on September 2, 2005 (70 Fed. Reg. 52,769). Twenty four historical populations and five artificial propagation programs are included in the overall DPS, which includes all naturally spawned anadromous *Oncorhynchus mykiss* originating below natural and manmade impassable barriers in streams in the Snake River Basin of southeast Washington, northeast Oregon, and Idaho.

### **Why were Snake River Summer Steelhead listed as a Threatened Species?**

Like many wild salmon and steelhead populations in the Columbia and Snake River Basins, Snake River Summer Steelhead are adversely affected by dams on rivers through which wild steelhead must migrate, both upstream as adults, and downstream as juveniles making their way to the ocean. Even though many dams have fish ladders, they create passage bottlenecks that delays migration during critical times. Snake River summer steelhead face some of the same difficult marine conditions that also adversely affect salmon. Snake River steelhead also face some poor habitat conditions in Idaho where streams has less-than-optimal stream flow due to water withdrawals for agriculture and other development. There are also impassible dams on the North Fork Clearwater and on the Snake River in Hells Canyon which block all access to historically important steelhead spawning grounds. For the wild Snake River adult steelhead that do make it back to Idaho Rivers to spawn, they also confront encounters with anglers, and while wild steelhead must be released unharmed, a fishing encounter with a wild steelhead can result in reduced spawning success, detract from or delay further migration, there is delayed mortality from wounds from being hooked and landed, and also immediate mortality from hooking wounds or poor handling. Wild steelhead also face adverse encounters with hatchery steelhead as they stage and spawn. Hatchery impacts on wild steelhead represent a serious impact on these ESA-listed steelhead, adversely affecting their abundance and productivity.

### **Snake River Wild Summer Steelhead – Current Status:**

The Snake River Basin steelhead DPS is at high risk of becoming inviable and going extinct. The most recent NOAA ESA Status Review Update (2015) describes that 12 of the 24 natural populations had a “high” overall viability risk, while ten were rated as “maintained”—meaning that the population does not meet the criteria for a viable population but does support ecological functions and preserve options for species recovery. One population was not rated, and only the population in Oregon’s Joseph Creek was listed as “highly viable.” Four out of the five Major Population Groups (“MPGs”) are not meeting the specific objectives in the Snake River Recovery Plan, and the status of many individual populations remains uncertain. A major problem in evaluating the status of Snake River Basin steelhead is that population-specific adult population abundance is generally not available for the species. Nevertheless, the Snake River Basin steelhead DPS continues to be listed only as “threatened.”

### **Why focus on angling when there are so many other factors affecting these wild fish?**

One of the limiting factors in the recovery of Snake River Basin wild steelhead is harvest, particularly of the “B-run” steelhead. Steelhead were historically harvested in tribal and non-tribal gillnet fisheries, and

in recreational fisheries in the mainstem Columbia River and in tributaries. Wild Steelhead are still harvested in tribal fisheries and there is incidental mortality associated with mark-selective recreational and commercial fisheries. The majority of impacts on the wild summer run steelhead occur in tribal gillnet and dip net fishing targeting Chinook salmon. Because of their larger size, the “B-run” fish are more vulnerable to gillnet gear. In recent years, total exploitation rates (the sum of all harvest) on wild “A-run” steelhead have been around 5%, while exploitation rates on the wild “B-run” have generally been in the range of 15–20%.

In Idaho, over the past two decades, hatchery-produced fish have provided the only sport fishing and harvest opportunity for salmon and steelhead. The Commissioners and IDFG officials authorize and implement fisheries for hatchery steelhead and hatchery Chinook salmon in Idaho that incidentally take Snake River Basin steelhead. Not all hatchery fish have their adipose fin clipped however, resulting in more hatchery-origin fish escaping to spawn with wild fish.

The primary disturbance to listed salmon and steelhead caused by recreational fishing is incidental catch and release by anglers targeting adipose fin-clipped hatchery fish. “Take,” as defined in the ESA, occurs when listed steelhead with intact adipose fins are killed, wounded, or injured by catch-and-release incidental to an authorized fishery, and by the simple act of trapping or capturing the protected fish. For example, IDFG estimated that 26,816 natural-origin steelhead entered Idaho in the 2014–15 run year, and that 16,062 natural-origin steelhead were caught and released during Idaho steelhead fisheries during that run year. IDFG estimated that the mortality from this catch-and-release was 2.99% of the natural steelhead entering Idaho—that is, the steelhead fishery alone in Idaho caused the death of approximately 803 wild (intact adipose fin) Snake River Basin steelhead.

In 2018, IDFG forecast a return of 22,400 wild “A-run” steelhead and 2,380 wild “B-run” steelhead. However, due to returns that are about half of the pre-season forecast, IDFG has reduced the bag limit for hatchery steelhead to one. The 2017 return also was less than half of the 10-year average return. Nevertheless, at the same mortality rate as in 2014–15, and factoring in the low return, the authorized steelhead fishery in 2018–19 would result in mortality of at least 222 wild Snake River Basin steelhead in what is the second of two disastrous returns for these iconic but imperiled fish.

### **Do other fisheries impact wild steelhead?**

In addition to steelhead-specific fishing effort, Snake River spring and summer-run Chinook salmon and Snake River fall Chinook salmon runs overlap with the runs of Snake River Basin “A-run” and “B-run” steelhead. There is considerable overlap between the distributions of Chinook salmon and steelhead, although Chinook salmon tend to occupy streams with lower gradients than steelhead. Fisheries for spring and summer Chinook salmon run from approximately April through August, while fisheries for fall Chinook salmon run from approximately August through the end of October. Steelhead bound for Idaho enter the Columbia River from about June 1 through October 1 each year, but a portion of the run spends the winter in the Columbia and Snake rivers downstream of Lower Granite Dam, migrating into Idaho in the spring of the following year. Wild steelhead are present in Idaho rivers and streams throughout the fishing seasons for Chinook salmon which the Commissioners and IDFG officials authorize and implement, and are incidentally taken in those fisheries.

Additionally, the 2018 Biological Opinion that addresses incidental take of Snake River Basin steelhead in the Columbia River under the management agreement stemming from the United States v. Oregon case does not authorize incidental take of these fish in Idaho.

Oregon and Washington prohibited Columbia River sport fishing steelhead retention in August, and closed some cold water refugia to fishing altogether. On September 12, Oregon and Washington closed the Columbia River to sport fishing for all salmon and steelhead completely.

### **Why Are You Suing Idaho and Not NOAA Fisheries?**

The Commissioners and IDFG officials have authorized and are implementing steelhead and Chinook salmon fisheries that incidentally take wild, natural-origin (intact adipose fin) Snake River Basin steelhead without any exemption or authorization for this incidental take. The fisheries authorized and implemented by the Commissioners and IDFG officials cause mortality, wounding, injury, and capture of wild Snake River Basin steelhead through catch-and-release fishing for the wild members of this species incidental to the authorized fisheries for hatchery-origin steelhead and salmon. If the steelhead and Chinook salmon fisheries proceed, they will continue to take wild Snake River Basin steelhead in violation of ESA § 9 and the implementing regulations.

While NOAA Fisheries is not being sued at this time, they may also be liable for ESA violations depending upon their actions in reviewing or approving ESA permits and authorizations for Idaho's fisheries that harm ESA-listed wild Snake River steelhead.

### **What are we asking the Idaho Fish and Game Commission to do?**

1. We are asking Idaho Fish & Game Commission and Department to close sport fisheries for steelhead throughout Idaho because they are causing unpermitted incidental take of wild Snake, Clearwater and Salmon River Basin steelhead.
2. Oregon and Washington must close Snake River sport fishing where fishing license reciprocity is provided between Washington and Idaho and between Oregon and Idaho along the Snake River.
3. Idaho and Oregon hatchery facilities should allow all hatchery –origin steelhead to enter the hatchery facilities and hatchery-origin steelhead should not be recycled into rivers where they may spawn with wild, natural-origin Snake River steelhead.
4. Hatcheries in Oregon, Washington and Idaho should not trap or take any wild, natural-origin steelhead in any hatchery facility, even under existing Hatchery genetic Management Plans (HGMPs), as the actual abundance of wild, natural-origin steelhead may be too low to meet guidelines allowing take of wild broodstock.

### **What Happens Next?**

If state officials and commissioners do not act within 60 days to correct their violations of ESA Section 9, The Conservation Angler, Snake River Waterkeeper, Wild Fish Conservancy, Friends of the Clearwater and Idaho Rivers United may pursue litigation in federal court against the named officials and commissioners.