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February 13, 2019

Via Certified Mail – Return Receipt Requested

Director Kelly Susewind
Washington Department of Fish & Wildlife
P.O. Box 43200
Olympia, Washington 98505-3200

Commission Chair Larry Carpenter
Washington Fish & Wildlife Commission
600 Capitol Way North
Olympia, WA 98501-1091

Commission Vice Chair Barbara Baker
Washington Fish & Wildlife Commission
600 Capitol Way North
Olympia, WA 98501-1091

Commissioner Bradley Smith
Washington Fish & Wildlife Commission
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Commissioner David Graybill
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Commissioner Jay Holzmiller
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Commissioner Kim Thorburn
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Commissioner Robert Kehoe
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Commissioner Donald McIsaac
Washington Fish and Wildlife Commission
600 Capitol Way North
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Secretary Wilbur L. Ross, Jr.
U.S. Department of Commerce
1401 Constitution Ave. N.W.
Washington, D.C. 20230

Acting Secretary David Bernhardt
U.S. Department of the Interior
1849 C Street N.W.
Washington, D.C. 20240

Assistant Administrator for Fisheries Chris Oliver
NOAA Fisheries
1315 East-West Highway
Silver Spring, MD 20910

Acting Director Margaret Everson
United States Fish & Wildlife Service
1849 C Street N.W.
Washington, D.C. 20240-0001

RE: Notice of Intent to Sue WDFW for Violations of Section 9 of the Endangered Species Act Resulting from Non-Native Skamania Steelhead Hatchery Programs

Dear Honorable Civil Servants:

This letter provides notice of Wild Fish Conservancy's ("Conservancy") intent to sue the Washington Department of Fish and Wildlife, Director Kelly Susewind, in his official capacity as the Director of the Washington Department of Fish and Wildlife, and Commissioners Larry Carpenter, Barbara Baker, Bradley Smith, David Graybill, Jay Holzmiller, Kim Thorburn, Robert Kehoe, and Donald McIsaac, in their official capacities as Commissioners of the Washington Fish and Wildlife Commission (collectively, "WDFW") for violations of section 9 of the Endangered Species Act ("ESA"), 16 U.S.C. § 1538, associated with WDFW's implementation of hatchery programs in the Puget Sound region that use the stock commonly referred to as Skamania Hatchery steelhead. This letter is provided pursuant to section 11(g) of the ESA, 16 U.S.C. § 1540(g).

In 1969, wild steelhead were declared Washington's official "state fish." Despite that recognition, wild steelhead populations have been depressed for some time and remain diminished. Wild Puget Sound steelhead have declined precipitously over the past thirty years: the average region-wide abundance between 1980 and 2004 was less than 4% of what it was in 1900. Since being listed as threatened under the ESA in 2007, Puget Sound wild steelhead abundance has continued to decline. The recent five-year average is less than 3% of what it was in 1900.

In the most recent 5-Year Review of the status of Puget Sound Steelhead, the National Marine Fisheries Service ("NMFS") concluded that "[g]enetically diverged and/or exogenous Skamania and Chambers creek stocks pose threats to natural origin steelhead population viability." The WDFW summer steelhead hatchery programs that use fish derived from Skamania Hatchery stock are the sole subject of this notice letter and, contrary to aiding recovery, these programs harm wild steelhead and suppress their recovery.

I. Legal Framework.

Section 9 of the ESA prohibits the "take" of endangered species by any person. 16 U.S.C. § 1538(a). This prohibition has generally been applied to species listed as "threatened" through regulations promulgated under section 4(d) of the ESA, 16 U.S.C. § 1533(d). Section 9 of the ESA prohibits violations of those regulations. 16 U.S.C. § 1538(a)(1)(G).

"Take" includes actions that harass, harm, pursue, wound, kill, trap, capture, or collect a protected species. 16 U.S.C. § 1532(19). "Harass" is defined to include acts that create the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavioral patterns, which include breeding, feeding, or sheltering. 50 C.F.R. § 17.3. "Harm" includes significant habitat modification or degradation that kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding or sheltering. *Id.*; 50 C.F.R. § 222.102.

II. Factual Background.

A. Affected Species.

The Puget Sound distinct population segment ("DPS") of steelhead was listed as a threatened species in 2007. 72 Fed. Reg. 26,722 (May 11, 2007); *see* 79 Fed. Reg. 20,802 (Apr. 14, 2014) (revision to listing). NMFS has applied the ESA section 9 take prohibition to this species. 50 C.F.R. §§ 223.102(c)(23), 223.203(a). NMFS designated critical habitat for this species in 2016. 81 Fed. Reg. 9,251 (Feb. 24, 2016).

The Puget Sound Chinook salmon evolutionary significant unit ("ESU") is listed as a threatened species. 64 Fed. Reg. 14,308 (March 24, 1999); 70 Fed. Reg. 37,160 (June 28, 2005); *see* 79 Fed. Reg. 20,802 (Apr. 14, 2014) (revision to listing). NMFS has applied the ESA section 9 take prohibition to this species. 50 C.F.R. §§ 223.102(c)(8) and 223.203(a). NMFS designated critical habitat for this species in 2005. 70 Fed. Reg. 52,630 (Sept. 2, 2005).

The coterminous United States bull trout population is listed as a threatened species. 64 Fed. Reg. 58,910 (Nov. 1, 1999). The United States Fish and Wildlife Service ("USFWS") has applied the ESA take prohibition to this species. 50 C.F.R. §§ 17.21 and 17.31(a). USFWS designated critical habitat for this species in 2010. 75 Fed. Reg. 63,898 (Oct. 18, 2010).

B. WDFW's Skamania Hatchery Steelhead Hatchery Programs.

NMFS has explained that "[t]wo hatchery stocks constitute the majority of steelhead hatchery production in Puget Sound: Chambers Creek winter-run steelhead and Skamania Hatchery summer-run steelhead."[1] WDFW operates several hatchery programs in the Puget Sound region[2] that use the stock of steelhead commonly referred to as "Skamania Hatchery steelhead."[3]

NMFS has provided the following description of the development of this stock:

> The Skamania Hatchery summer-run steelhead stock was founded in the 1950s from wild fish collected in the Washougal and Klickitat rivers, and then transferred to several other facilities where broodstocks are now collected (Howell et al. 1985, Hymer et al. 1992). As with the Chambers Creek winter-run steelhead stock, continued use of the earliest spawning adults resulted in an advancement in spawn timing. In Puget Sound, Skamania Hatchery-origin

[1] NMFS, *Summary of Scientific Conclusions of the Review of the Status of Puget Sound Steelhead (Oncorhyncus mykiss)* 11 (July 26, 2005).
[2] Puget Sound region, as used herein, refers to Puget Sound, the Strait of Juan de Fuca, Hood Canal, and the Strait of Georgia and their tributaries, bounded to the west by the Elwha River (inclusive) and to the north by the Nooksack River and Dakota Creek (inclusive).
[3] "Skamania Hatchery steelhead," as used herein, refers to hatchery stock derived entirely or partially from Skamania Hatchery steelhead or which originated from Skamania Hatchery steelhead.

> summer-run steelhead programs continue in the Stillaguamish, Snohomish, and Green River basins. Genetically, hatchery populations founded using Skamania Hatchery summer-run steelhead and feral Skamania Hatchery fish are genetically distinct from Puget Sound populations (Busby et al. 1996, Phelps et al. 1997). Skamania summer-run steelhead are also distinct from Puget Sound steelhead populations in that they possess 58 chromosomes, in contrast to the 60 chromosomes commonly found in Puget Sound O. mykiss.[4]

NMFS has also noted that "[t]he extensive use of Chambers Creek Hatchery winter-run steelhead and Skamania Hatchery summer-run steelhead throughout the ESU were considered substantial risks to ESU diversity"[5] and, in determining to list the Puget Sound steelhead DPS as threatened under the ESA, expressed "concerns regarding the extensive propagation of the Chambers Creek and Skamania hatchery steelhead stocks and their possible contribution to the observed declines in Puget Sound steelhead populations."[6]

Skamania Hatchery steelhead are excluded from the Puget Sound steelhead DPS protected as a threatened species under the ESA "because they are more than moderately diverged from the local native populations." 72 Fed. Reg. at 26,722.

WDFW operates several Skamania Hatchery steelhead programs[7] in the Puget Sound region. The following table provides a summary of information currently available to the Conservancy regarding those programs:

Basin in which the Hatchery Program is Located	Hatchery Program Name	2018 Release Number[8]	Target Release Number	Stated Release Sites
Duwamish/Green River	Green River Summer Steelhead (Soos Creek Hatchery)	50,700	50,000	Big Soos Creek (a tributary to the Green River)

[4] *Summary of Scientific Conclusions of the Review of the Status of Puget Sound Steelhead* 23.
[5] *Id*. at 12.
[6] NMFS, *Endangered and Threatened Species: Final Listing Determination for Puget Sound Steelhead*, 72 Fed. Reg. 26,722, 26,732 (May 11, 2007).
[7] Skamania Hatchery steelhead hatchery programs, as used herein, includes all activities and facilities involved in the rearing, release, and monitoring of Skamania Hatchery steelhead, including but not limited to broodstock collection activities, incubation and rearing activities, acclimation activities, fish releases, monitoring and evaluation activities, surface and ground water withdrawals, effluent discharges, hatchery facilities and associated structures including weirs, fish ladders, and other structures used to collect and/or monitoring fish, water intake structures, and effluent discharge structures.
[8] The 2018 and Target Release Numbers and Stated Release Sites provided herein are based upon information currently available to the Conservancy, including information obtained from Hatchery and Genetic Management Plans for the programs. The Conservancy does not have access to information necessary to verify these descriptions.

Duwamish/Green River	Green River Summer Steelhead (Icy Creek Rearing Pond)	54,643	50,000	Icy Creek (a tributary to the Green River)
Skykomish River	Reiter Pond Summer Steelhead	107,798	250,000	Reiter Ponds (on the Skykomish River, a tributary to the Snohomish River)
	Wallace Hatchery	38,923		Tye Lake (on the South Fork of the Skykomish)
Stillaguamish River	Whitehorse Pond	78,046	90,000	Whitehorse Pond (Whitehorse Springs Creek, a tributary to the N.F. Stillaguamish River)

The Hatchery and Genetic Management Plan ("HGMP") for the Green River Summer Steelhead Program describes that the "[e]arly summer hatchery stock perpetuated in the Green River system is not considered part of the Puget Sound [steelhead DPS]" listed as threatened under the ESA.[9] This stock is derived from Skamania Hatchery summer steelhead stock and is not native to the Green River.[10] Program fish are produced at two facilities: the Soos Creek Hatchery, located on Soos Creek (a tributary to the Green River at RM 33.5); and the Icy Creek Rearing Pond, located on Icy Creek (also a tributary to the Green River at RM 48.3).[11] The program involves broodstock collection of up to 100 pairs of fish annually at the Soos Creek Hatchery and Icy Creek Rearing Pond and releases of 50,000 yearlings at each of the Soos Creek and Icy Creek release sites.[12]

The HGMP for the Reiter Pond Summer Steelhead Program also describes that the stock is derived from Skamania Hatchery summer steelhead stock, is not listed under the ESA, and is not native to the Snohomish River/Skykomish River system.[13] Program fish are produced at two facilities: Reiter Ponds, located on the Skykomish River (a tributary of the Snohomish River) at RM 46; and the Wallace River Hatchery, located on the Wallace River at RM 4.[14] The program involves broodstock collection of up to 600 adult fish annually at Reiter

[9] WDFW, *Hatchery & Genetic Management Plan for Soos Creek (Green River) Hatchery Summer Steelhead Program (Segregated), last updated October 29, 2015* 1, *available at* http://wdfw.wa.gov/hatcheries/hgmp/pdf/puget_sound/soos_early-sush_hgmp_2015_draft_103015.pdf (last visited Jan. 28, 2019) (hereinafter "*Green River HGMP*").

[10] *See id*. at 27; *see also* Hatchery Scientific Review Group, *Hatchery Reform Recommendations – March 2003* 176, *available at http://hatcheryreform.us/wp-content/uploads/2016/05/HSRG_Recommendations_Central_Sound.pdf* (last visited Jan. 28, 2019).

[11] *Green River HGMP* at ii, 2.

[12] *Id*. at 8.

[13] WDFW, *Hatchery & Genetic Management Plan for Reiter Pond Summer Steelhead Program, last updated August 2, 2005* 2, 29, *available at* http://www.westcoast.fisheries.noaa.gov/publications/hatchery/ps_deis/reiterpond_stlhdsmr_wdfw.pdf (last visited Jan. 28, 2019).

[14] *Id*. at 2.

Ponds and releases of 250,000 smolts at the Reiter Ponds release site.[15] It appears that the HGMP for this program has not been updated since the Puget Sound steelhead DPS was listed as threatened under the ESA in 2007.

The HGMP for the Whitehorse Pond Summer Steelhead Program also describes that the stock is derived from Skamania Hatchery summer steelhead stock, is not listed under the ESA, and is not native to the Stillaguamish River system.[16] Program fish are produced at three facilities: Reiter Ponds, located on the Skykomish River (a tributary of the Snohomish River) at RM 46; the Arlington Hatchery in Arlington, Washington; and Whitehorse Pond, located 1.5 miles upstream from the mouth of Whitehorse Springs Creek (a tributary to the North Fork Stillaguamish River at RM 28 from its confluence with the mainstem Stillaguamish River).[17] The program involves broodstock collected at Reiter Ponds and releases of 90,000 smolts at the Whitehorse Pond release site.[18] It appears that the HGMP for this program has not been updated since the Puget Sound steelhead DPS was listed as threatened under the ESA in 2007.

NMFS emphasized its concerns about these Skamania Hatchery steelhead programs in a letter to WDFW dated July 21, 2017, a copy of which is attached hereto as Exhibit 1. After noting that these programs use steelhead stock that is "highly domesticated" and derived from "tributaries to the lower Columbia River," NMFS explained:

> The Puget Sound Technical Recovery Team considered the use of out-of-DPS steelhead [such as the Skamania Hatchery stock] as a key risk factor… in their analysis of steelhead populations and Distinct Population Segment (DPS) viability. The production and release of hatchery-origin Skamania stock early summer steelhead into the Snohomish basin has negatively affected the abundance, diversity, spatial structure, and productivity of the winter and summer steelhead natural populations… A key technical document… concluded that genetic impacts to the two native summer steelhead populations in the Snohomish Basin have been so large that they are now considered feral populations of the Skamania-stock fish… [Further,] we concluded that production and release of Skamania steelhead was likely to adversely affect the abundance, diversity, spatial structure, and productivity of the natural-origin steelhead populations in the Stillaguamish basin… WDFW has noted that Skamania hatchery programs pose a high potential genetic risk…

NMFS went on to "encourage the timely development of alternatives" to the use of Skamania Hatchery steelhead stock in the Snohomish and Stillaguamish basins. WDWF has nonetheless continued to implement these hatchery programs.

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[15] *Id*. at 2, 3, 7.
[16] WDFW, *Hatchery & Genetic Management Plan for Whitehorse Pond Summer Steelhead Program, last updated August 3, 2005* 2, 30, *available at* http://www.westcoast.fisheries.noaa.gov/publications/hatchery/ps_deis/whitehorse_stlhdsmr_wdfw.pdf (last visited Jan. 28, 2019).
[17] *Id*. at 2.
[18] *Id*. at 2, 3, 7.

Wild Fish Conservancy provides herein notice of its intent to sue WDFW for all violations of section 9 of the ESA associated with implementation of the hatchery programs described in these materials, including any modified versions thereof, and any other Skamania Hatchery steelhead programs WDFW is implementing in the Puget Sound region.

III. Take Caused by WDFW's Skamania Hatchery Steelhead Programs.

WDFW's Skamania Hatchery steelhead hatchery programs cause take through a variety of mechanisms and activities. These include genetic introgression, ecological interactions, broodstock collection activities, facility effects, monitoring and evaluation activities, and disease transmission.

A. Take Through Genetic Introgression.

WDFW's Skamania Hatchery steelhead hatchery programs cause take through genetic introgression. This is perhaps the most detrimental harm caused by these programs. Fish become domesticated in a hatchery environment and thereby less fit to survive and reproduce in the wild. Skamania Hatchery steelhead are highly-domesticated due to decades of artificial production and now have genetically heritable life history traits that contrast significantly with most populations within the Puget Sound steelhead DPS.

Take through genetic introgression occurs when Skamania Hatchery steelhead are allowed to spawn in the wild and thereby pass their maladaptive genes to the wild populations within the Puget Sound steelhead DPS. The resultant offspring have markedly reduced fitness, dying at a much higher rate before spawning than would occur with two wild parents.

NMFS noted these concerns when it listed the Puget Sound steelhead DPS under the ESA:

> The [Biological Review Team ("BRT")] concluded that efforts by hatchery managers to prevent natural spawning by . . . Skamania summer-run hatchery fish were unlikely to be completely effective, with potentially adverse consequences. The BRT concluded that opportunities for genetic and ecological interactions between hatchery and wild steelhead in Puget Sound were substantial, with significant potential to reduce natural productivity.

72 Fed. Reg. 26,722, 26,728 (May 11, 2007).

B. Take Through Ecological Interactions.

WDFW's Skamania Hatchery steelhead hatchery programs cause take of ESA-listed Puget Sound Chinook salmon, Puget Sound steelhead, and bull trout through ecological interactions. Such take occurs through a variety of mechanisms.

WDFW's Skamania Hatchery steelhead hatchery programs cause take of ESA-listed salmonids through increased competition for food and space, including rearing and spawning

territory. The programs also cause take of Puget Sound steelhead through increased competition for spawning mates.

WDFW's Skamania Hatchery steelhead hatchery programs cause take of ESA-listed salmonids through predation. This occurs when the hatchery fish, including smolts and residualized fish, prey on protected fish. The programs also cause take when hatchery fish—less fit for survival in the wild—attract predators that then consume ESA-listed fish.

C. Take Through Broodstock Collection Activities.

WDFW's Skamania Hatchery steelhead hatchery programs cause take of Puget Sound Chinook salmon, Puget Sound steelhead, and bull trout through the broodstock collection activities. Broodstock collection activities are those associated with the capture of returning steelhead adults. These activities can include employing a weir or barrier that forces migrating adults to enter a ladder or trap or capturing adult fish using a net or a hook and line.

While generally aimed at hatchery steelhead, these activities harm listed salmonids, for instance, by delaying their migration to natural spawning habitat or inflicting physical injury or causing death from capture or handling. The programs cause take when the broodstock collection activities result in incidental or intentional collection, capture, trapping, and/or removal of ESA-listed salmonids. Take also occurs when the broodstock collection activities, and/or structures or devices associated therewith, harm, harass, injure, and/or kill protected fish. Broodstock collection activities also cause take when they affect the ability of ESA-listed salmonids to migrate, including when spawning migration is delayed or prevented.

D. Take Through Facility Effects.

WDFW's Skamania Hatchery steelhead hatchery programs cause take of Puget Sound Chinook salmon, Puget Sound steelhead, and bull trout through facility effects. A variety of facility effects cause such take.

The programs cause take because the hatcheries create a false attractant for ESA-listed salmonids. Take occurs when the ESA-protected fish are harmed, injured, delayed, or killed when attempting to enter hatchery facilities, including facility outfalls and fish ladders. Take also occurs when the protected fish enter hatchery facilities and are thereby captured, trapped, or collected by the hatchery. Additional take occurs when ESA-listed salmonids that have entered hatchery facilities are injured or killed in the hatchery environment or during attempts to return them to the wild and when their spawning migration is delayed or prevented.

WDFW's Skamania Hatchery steelhead hatchery programs cause take because the effluent discharged from the hatcheries adversely affects ESA-listed salmonids. The water withdrawals at the hatcheries also cause take of ESA-listed salmonids by reducing water flow in the rivers and streams and because protected fish are harmed, injured, killed, trapped and/or captured (*i.e.*, entrained) by the surface water intake structures.

The hatchery programs also cause take when weirs and other in-stream structures delay or prevent ESA-listed salmonids' migration abilities.

E. Take Through Monitoring and Evaluation Activities.

WDFW's Skamania Hatchery steelhead hatchery programs cause take of Puget Sound Chinook salmon, Puget Sound steelhead, and bull trout through monitoring and evaluation activities. Monitoring and evaluation activities are those undertaken to evaluate the success of the programs and/or the effects on wild fish. Specific activities can include electrofishing and other salmonid sampling efforts that directly affect listed salmonids and ecological research activities that adversely affect the habitats of listed salmonids or disrupt their typical life history functions. The monitoring and evaluation activities cause take of ESA-listed salmonids when they capture, collect, trap, harm, harass, injure, and kill protected fish.

F. Take Through Disease Transmission.

WDFW's Skamania Hatchery steelhead hatchery programs cause take of Puget Sound Chinook salmon, Puget Sound steelhead, and bull trout through the transmission of diseases. The unnaturally high densities of fish maintained in the hatchery facilities leads to increased occurrence of infection of fish within hatcheries and the creation of concentrated and effective vectors for the transmission of infection to other fish. Take occurs when the Skamania Hatchery steelhead hatchery programs transmit disease through water discharges from the hatcheries or directly from fish released by the hatcheries to ESA-listed salmonids.

IV. WDFW's Violations of Section 9 of the ESA.

WDFW is in violation of section 9 of the ESA, 16 U.S.C. § 1538, for implementing and funding the Skamania Hatchery steelhead programs in the Puget Sound region. As described above, these programs cause take of ESA-listed Puget Sound steelhead, Puget Sound Chinook salmon, and bull trout. The descriptions provided above of take and of WDFW's Skamania Hatchery steelhead programs operating in the Puget Sound region are based upon the information currently available to the Conservancy. The Conservancy intends to sue WDFW for all take of ESA-listed salmonids resulting from all of WDFW's Skamania Hatchery steelhead programs being implemented and/or operated in the Puget Sound region.

This take is not exempt from liability under section 9 of the ESA. However, the Conservancy's concerns regarding WDFW's Skamania Hatchery steelhead programs being implemented in the Puget Sound region stretches far beyond the mere lack of authorization for these programs. These hatchery programs are severely affecting ESA-listed salmonids and their ability to recovery to a point where the protections of the ESA would not be necessary.

The Skamania Hatchery steelhead programs are "segregated hatchery programs" as defined by the congressionally-chartered Hatchery Science Review Group ("HSRG"). The HSRG has made clear recommendations regarding the maximum acceptable level of gene flow from segregated hatchery programs to wild conspecific populations. This is measured by pHOS—the proportion of the total number of adult fish present on spawning grounds in the

wild that originate from segregated hatchery facilities. The HSRG recommendation is to maintain a pHOS of less than five percent. This and/or similar requirements would be imposed on WDFW's Skamania Hatchery steelhead programs through any exemption from liability under section 9 of the ESA that may be granted, along with monitoring and evaluation requirements necessary to ensure compliance with such requirements. It is unlikely that WDFW would be able to fully comply with these requirements and that the hatchery programs will continue to contribute to the decline of ESA-listed salmonids.

Accordingly, the Conservancy provides notice of its intent to sue WDFW to bring its Skamania Hatchery steelhead programs in the Puget Sound region into compliance with section 9 of the ESA. This includes complete compliance with any exemption from ESA liability for take that may be lawfully issued in accordance with the requirements of the ESA, the National Environmental Policy Act, and any other applicable statutes and regulations.

V. Party Giving Notice of Intent to Sue.

The full name, address, and telephone number of the party giving notice is:

Wild Fish Conservancy
P.O. Box 402
15629 Main Street NE
Duvall, WA 98019
Tel: (425) 788-1167

VI. Attorney Representing Wild Fish Conservancy.

The attorney representing Wild Fish Conservancy in this matter is:

Brian A. Knutsen
Kampmeier & Knutsen PLLC
221 S.E. 11th Avenue, Suite 217
Portland, Oregon 97214
Tel: (503) 841-6515
Email: brian@kampmeierknutsen.com

VII. Conclusion.

This letter provides notice under section 11(g) of the ESA, 16 U.S.C. § 1540(g), of Wild Fish Conservancy's intent to sue WDFW for violations of the ESA discussed herein. Unless the ongoing and imminent violations described herein are fully corrected within sixty days, Wild Fish Conservancy intends to file suit against WDFW to enforce the ESA. Wild Fish Conservancy is available during the sixty-day notice period to discuss effective remedies and actions that will assure future compliance with the ESA.

Very truly yours,

Kampmeier & Knutsen PLLC

By: _____
Brian A. Knutsen

cc: Michael S. Grossmann (via email, MikeG1@atg.wa.gov)

CERTIFICATE OF SERVICE

I, Brian A. Knutsen, declare under penalty of perjury of the laws of the United States that I am counsel for Wild Fish Conservancy and that on February 13, 2019, I caused copies of the foregoing to be served on the following by depositing them with the U.S. Postal Service, postage prepaid, via certified mail, return receipt requested:

Director Kelly Susewind
Washington Department of Fish & Wildlife
P.O. Box 43200
Olympia, Washington 98505-3200

Commission Chair Larry Carpenter
Washington Fish & Wildlife Commission
600 Capitol Way North
Olympia, WA 98501-1091

Commission Vice Chair Barbara Baker
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1315 East-West Highway
Silver Spring, MD 20910

Acting Director Margaret Everson
United States Fish & Wildlife Service
1849 C Street N.W.
Washington, D.C. 20240-0001

Brian A. Knutsen

EXHIBIT 1

UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
West Coast Region
1201 NE Lloyd Boulevard, Suite 1100
PORTLAND, OREGON 97232-1274

July 21, 2017

Dr. Jim Unsworth, Director
Washington Department of Fish and Wildlife
600 Capital Way North
Olympia, Washington 98501-1091

Dear Director Unsworth:

NOAA's National Marine Fisheries Service (NMFS) is currently reviewing hatchery and genetic management plans (HGMPs) for Puget Sound salmon and steelhead hatchery programs under the Endangered Species Act (ESA) and National Environmental Policy Act (NEPA). NMFS is aware that the Washington Department of Fish and Wildlife (WDFW) operates summer steelhead programs in the Stillaguamish (Whitehorse Ponds) and Snohomish (Reiter Ponds) River basins but, to date, updated HGMPs for these two programs have not been submitted to NMFS for review and approval.

NMFS recognizes the importance of these summer steelhead hatchery programs to fisheries in Puget Sound. Fishing for steelhead in summer months adds to the variety of opportunities for recreational and tribal fishermen in a part of the state where steelhead fishing typically occurs during the winter months. However, NMFS continues to have concerns about the use of Skamania steelhead broodstock in the Stillaguamish and Snohomish River basins.

Skamania summer steelhead are derived from a highly domesticated broodstock developed in hatchery programs located in tributaries to the Lower Columbia River. The broodstock was subsequently transplanted for use in Puget Sound hatcheries. The Puget Sound Technical Recovery Team considered use of out-of-DPS steelhead as a key risk factor (Hard et al. 2015) in their analysis of steelhead populations and Distinct Population Segment (DPS) viability. The production and release of hatchery-origin Skamania stock early summer steelhead into the Snohomish basin has negatively affected the abundance, diversity, spatial structure, and productivity of the winter and summer steelhead natural populations ss described in our biological opinion completed in 2016 for the WDFW's Reiter Ponds and Tokul Creek hatchery early winter steelhead programs (NMFS 2016a). A key technical document cited in our opinion, completed by Dr. Ken Warheit of the WDFW Molecular Genetics Laboratory, concluded that genetic impacts to the two native summer steelhead populations in the Snohomish Basin have been so large that they are now considered feral populations of Skamania-stock fish (Warheit 2014). In a second biological opinion (NMFS 2016b), we concluded that production and release of Skamania steelhead was likely to adversely affect the abundance, diversity, spatial structure, and productivity of the natural-origin steelhead populations in the Stillaguamish basin. Although the precise effects of Skamania steelhead production on the two native Stillaguamish summer steelhead populations are still unknown, given the small sizes of any extant population(s), historical hatchery fish release strategies, and the long term duration of the

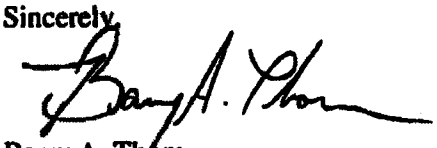
Skamania program, genetic diversity effects may potentially be similar to those observed for the native Skykomish summer steelhead populations. WDFW has noted that Skamania hatchery programs pose a high potential genetic risk (Scott and Gill 2008).

NMFS encourages you to work with the tribal co-managers, the Ad Hoc Puget Sound Steelhead Advisory Group, and other interested stakeholders to review the effects of these programs on the listed summer steelhead populations in the Snohomish and Stillaguamish basins prior to submitting updated HGMPs for the Reiter and Whitehorse Ponds summer steelhead programs Specifically, we hope that this review will encourage the timely development of alternatives to using segregated Skamania broodstock in the Snohomish and Stillaguamish basins.

We value the work that WDFW has done to date to evaluate the effects of the Skamania summer steelhead hatchery programs (e.g., Warheit 2014), and we look forward to working with you, the tribal co-managers, and other parties to determine how hatchery programs in the Stillaguamish and Snohomish River basins can be structured to best serve both fisheries and the recovery of listed Puget Sound steelhead.

If you have any questions, please contact Allyson Purcell, Acting Branch Chief for Anadromous Production and Inland Fisheries, at (503) 736-4736.

Sincerely,



Barry A. Thom
Regional Administrator

cc: Jim Scott, WDFW
Mike Crewson, Tulalip Tribes
Ray Fryberg, Tulalip Tribes
Jason Griffith, Stillaguamish Tribe
Lorraine Loomis, Northwest Indian Fisheries Commission
Allyson Purcell, NMFS
Tim Tynan, NMFS

Citations

Hard, J.J., J.M. Myers, E.J. Connor, R.A. Hayman, R.G. Kope, G. Luchetti, A.R. Marshall, G.R. Pess, and B.E. Thompson. 2015. Viability criteria for steelhead within the Puget Sound distinct population segment. U.S. Department of Commerce, NOAA Tech. Memo. NMFS-NWFSC-129.

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NMFS. 2016b. Endangered Species Act - Section 7 Biological Opinion and Magnuson-Stevens Fishery Conservation and Management Act Essential Fish Habitat (EFH) Consultation for Three Hatchery and Genetic Management Plans for Early Winter Steelhead in the Dungeness, Nooksack, and Stillaguamish River basins under Limit 6 of the Endangered Species Act Section 4(d) Rule. NMFS Consultation Number: WCR-2015-2024.

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