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UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

EUGENE DIVISION

WILLAMETTE RIVERKEEPER; THE
CONSERVATION ANGLER,

Plaintiffs,

vs.

NATIONAL MARINE FISHERIES SERVICE;
BARRY THOM, Regional Administrator,
Marine Fisheries Service; U.S. ARMY CORPS
OF ENGINEERS; MICHAEL HELTON,
District Engineer, U.S. Army Corps of
Engineers; U.S. FISH AND WILDLIFE
SERVICE; ROBYN THORSON, Regional
Director, U.S. Fish and Wildlife Service,

Defendants.

Case No.: 6:21-cv-34

**COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF**

(Violations of Endangered Species Act,
16 U.S.C. §§ 1531 *et seq.*, and the
National Environmental Policy Act, 42
U.S.C. §§ 4321 *et seq.*)

1. This is a civil suit for declaratory and injunctive relief to challenge federal agency actions related to winter steelhead trout in the upper Willamette River in Oregon. Winter steelhead are listed under the Endangered Species Act (“ESA”) as threatened with extinction. Since winter steelhead were listed under the ESA, populations have declined even further. Plaintiffs Willamette Riverkeeper and The Conservation Angler seek to compel Defendants National Marine Fisheries Service (“NMFS”), U.S. Army Corps of Engineers (“Corps of Engineers”), and U.S. Fish and Wildlife Service (“Fish and Wildlife Service”) to comply fully with the ESA and the National Environmental Policy Act (“NEPA”) to ensure winter steelhead survive and recover in their native habitat.

2. The Corps of Engineers and Fish and Wildlife Service have exercised their discretion and funded or facilitated the production and release of hatchery summer steelhead into winter steelhead habitat, which has jeopardized the continued existence of winter steelhead and destroyed and adversely modified their critical habitat. In turn, NMFS evaluated the effects on winter steelhead of adopting a Hatchery and Genetic Management Plan (“HGMP”) for hatchery summer steelhead, and issued an unlawful Biological Opinion (“BiOp”) finding that the program does not jeopardize the continued existence of winter steelhead or destroy or adversely modify their critical habitat. NMFS also violated ESA regulations when it approved the hatchery summer steelhead HGMP. Finally, NMFS violated the National Environmental Policy Act (“NEPA”) when it issued an unlawful Environmental Impact Statement (“EIS”) and Record of Decision (“ROD”) to approve the hatchery summer steelhead program.

Jurisdiction.

3. An actual, justiciable controversy exists between the parties.

4. This Court has jurisdiction to resolve claims against NMFS pursuant to 28 U.S.C. § 1131. This Court has jurisdiction to resolve claims against the Corps of Engineers and Fish and Wildlife Service pursuant to 28 U.S.C. § 1131 and 16 U.S.C. § 1540(g)(1). Pursuant to the citizen suit provision of the ESA, more than 60 days ago, Plaintiffs served the Corps of Engineers and the Fish and Wildlife Service with written notice of their intent to sue for claims properly brought pursuant to the citizens suit provision. 16 U.S.C. § 1540(g)(2). Neither the

Corps of Engineers or the Fish and Wildlife Service has remedied violations of the ESA, which are ongoing and likely to continue.

5. The injunctive relief Plaintiffs seek is proper under 16 U.S.C. § 1540(g)(1)(A), 28 U.S.C. § 1651(a), 28 U.S.C. §§ 2201–02, and 5 U.S.C. §§ 701–06.

6. Venue is proper in this Court under 16 U.S.C. § 1540(g)(3)(A), 28 U.S.C. § 1391, and Local Rule (“LR”) 3-2(3), because the South Santiam Hatchery and other facilities or activities owned or financed by the Corps of Engineers and/or the Fish and Wildlife Service are located in Linn County. Hatchery summer steelhead produced and released into the South Santiam River exist in Linn County. The Minto Fish Facility and other facilities or activities owned or financed by the Corps of Engineers and/or the Fish and Wildlife Service are located in Marion County. Hatchery summer steelhead released into the North Santiam River exist in Marion County. A substantial part of the events or omissions giving rise to the claims herein occurred within Linn County and Marion County. Agency records and/or personnel are located in Linn County and Marion County.

Parties.

7. Plaintiff Willamette Riverkeeper is a non-profit organization founded in 1996, and focuses on protecting and restoring the resources of the Willamette River basin in Oregon. Willamette Riverkeeper works on programs and projects ranging from Clean Water Act compliance and river education, to Superfund cleanup and restoring habitat. Willamette Riverkeeper filed suit to force the Corps of Engineers and other federal action agencies to consult with NMFS as to the effects of federal projects and facilities on ESA-listed fish in the upper Willamette River basin, including winter steelhead trout. That consultation resulted in a 2008 Biological Opinion related to effects of federal facilities and projects on winter steelhead trout and spring Chinook salmon in the upper Willamette River basin.

8. Plaintiff The Conservation Angler Conservation Angler is non-profit conservation group that advocates for wild fish and fisheries, and advocates to protect and conserve wild steelhead, salmon, trout and char throughout their Pacific range. The Conservation Angler is a watch-dog organization - holding public agencies, countries and nations accountable for protecting and

conserving wild fish for present and future generations - using education, legal, administrative and political means necessary to prevent the extinction and to foster a long-term recovery of wild steelhead trout, salmon, and char to fishable and ultimately, harvestable abundance.

9. Plaintiffs Willamette Riverkeeper and Conservation Angler have suffered and continue to suffer harm from Defendants' violations of the ESA and NEPA. Plaintiffs' members include anglers who enjoy fishing, and would seek and enjoy catch and release fishing of populations of winter steelhead trout in the North Santiam River and South Santiam River basins, if the populations were recovered. Plaintiffs' members include anglers and others with scientific and professional interests in the genetic integrity of winter steelhead trout. Plaintiffs' members include anglers who are outfitters or guides who seek to advance commercial interests in what could be a winter steelhead trout fishery in the North Santiam River and South Santiam River basins.

10. Defendant NMFS is an agency of the U.S. Department of Commerce. NMFS is responsible for the survival and recovery of certain aquatic species listed under the ESA, including winter steelhead in the upper Willamette River basin. NMFS must also comply with NEPA.

11. Defendant Barry Thom is the Regional Administrator of NMFS. He is sued in his official capacity. Mr. Thom is responsible for actions or decisions alleged herein.

12. Defendant Corps of Engineers is an agency of the U.S. Department of the Army. The Corps of Engineers built and operates federal dams and other facilities in the North Santiam River and South Santiam River basins. The Corps of Engineers built fish hatcheries in the North Santiam and South Santiam River basins. The Corps of Engineers funds, facilitates, or otherwise authorizes the production and release of hatchery summer steelhead that jeopardize winter steelhead in the upper Willamette River basin.

13. Defendant Michael Helton is the District Engineer for the Corps of Engineers. Mr. Helton is sued in his official capacity. Mr. Helton is responsible for actions or decisions alleged herein.

14. Defendant Fish and Wildlife Service is an agency within the U.S Department of the Interior. The Fish and Wildlife Service must comply with the ESA. The Fish and Wildlife Service has funded aspects of the hatchery summer steelhead program.

15. Defendant Robyn Thorson is the Regional Director of the Fish and Wildlife Service. Ms. Thorson is sued in her official capacity. Ms. Thorson is responsible for actions or decisions alleged herein.

Allegations.

16. The Willamette River originates in the Cascade Mountains in Oregon and flows generally northward to its confluence with the Columbia River. The mainstem Willamette River is 187 miles long. At river mile 27, the Willamette River falls approximately 35 feet. By volume of water, Willamette Falls is the largest in Oregon, and the sixth largest in the United States. Historically, in its natural state, Willamette Falls was a barrier to the upstream migration of anadromous fish, except during relatively high flows in the winter or early spring. Historically, steelhead trout (*Oncorhynchus mykiss*) and Chinook salmon (*Oncorhynchus tshawytscha*) were able to ascend Willamette Falls to reach the Willamette River basin above the falls. The part of the Willamette River basin above Willamette Falls is called the “upper” Willamette River.

17. The North Santiam River originates near Three Fingered Jack in the Cascade Mountains and flows roughly 92 miles to its confluence with the South Santiam River. The Corps of Engineers built Big Cliff Dam and Detroit Dam on the North Santiam River. Big Cliff Dam is downstream of Detroit Dam, and is a barrier to the upstream volitional migration of winter steelhead.

18. The South Santiam River originates at the confluence of Sevenmile and Squaw Creeks in the Cascade Mountains and flows roughly 66 miles to its confluence with the North Santiam River. The Corps of Engineers built Foster Dam on the South Santiam River. Foster Dam is a barrier to the volitional upstream migration of winter steelhead.

19. The North Santiam River and South Santiam River join to form the Santiam River, which flows roughly 10 miles to its confluence with the Willamette River upstream of Willamette Falls.

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