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UNITED STATES DISTRICT COURT
 WESTERN DISTRICT OF WASHINGTON
 AT SEATTLE

WILD FISH CONSERVANCY,

Plaintiff,

v.

WASHINGTON DEPARTMENT OF FISH &
 WILDLIFE; KELLY SUSEWIND, in his official capacity
 as the Director of the Washington Department of Fish &
 Wildlife; LARRY CARPENTER, in his official capacity
 as Chair of the Washington Fish & Wildlife Commission;
 BARBARA BAKER, in her official capacity as Vice
 Chair of the Washington Fish & Wildlife Commission;
 JAMES ANDERSON, in his official capacity as a
 member of the Washington Fish & Wildlife Commission;
 LORNA SMITH, in her official capacity as a member of
 the Washington Fish & Wildlife Commission; FRED
 KOONTZ, in his official capacity as a member of the
 Washington Fish & Wildlife Commission; MOLLY
 LINVILLE, in her official capacity as a member of the
 Washington Fish & Wildlife Commission; DONALD
 MCISAAC, in his official capacity as a member of the
 Washington Fish & Wildlife Commission; and KIM
 THORNBURN, in her official capacity as a member of
 the Washington Fish & Wildlife Commission,

Defendants.

Case No. 2:21-cv-00169

COMPLAINT

COMPLAINT - 1
 No. 2:21-cv-00169

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INTRODUCTION

1. The State of Washington declared steelhead the official state fish in 1969. Despite that designation, wild Puget Sound steelhead have declined precipitously since that time. The average region-wide abundance between 1980 and 2004 was less than four percent of levels present in 1900. Puget Sound steelhead have continued to decline since being listed as a threatened species under the Endangered Species Act (“ESA”) in 2007. The most recent five-year average puts Puget Sound steelhead abundance at less than three percent of historical levels.

2. It was once believed that hatchery production could replace salmonid-sustaining ecosystems and provide an abundance of fish. It is now understood that, not only have hatcheries failed to meet those expectations, but they have contributed to the decline of wild salmonids. Hatchery fish harm wild salmonid populations and their ability to recover through a variety of mechanisms, including genetic introgression and ecological interactions. Genetic introgression occurs when hatchery fish spawn with wild fish and thereby transfer their maladapted (domesticated) genetic traits to the wild salmonid populations. Ecological interactions occur when hatchery fish compete with wild fish for resources, such as food and territory.

3. Defendants the Washington Department of Fish and Wildlife, its Director, and the members of the Washington Fish and Wildlife Commission (collectively, “WDFW”) implement hatchery programs in the Puget Sound region using highly domesticated stocks known as “Skamania” summer steelhead and “Chambers Creek” winter steelhead. The National Marine Fisheries Service (“NMFS”) excluded those stocks when it listed the Puget Sound steelhead distinct population segment (“DPS”) as a threatened species under the ESA in 2007 because those hatchery stocks are genetically diverged from the local native populations. 72 Fed. Reg. 26,722, 26,722 (May 11, 2007). This divergence increases the potential for passing on maladaptive traits to ESA-listed Puget Sound steelhead, thereby undermining recovery efforts. NMFS also found that efforts to prevent natural spawning of those hatchery fish is unlikely to be completely effective, “with significant potential to reduce natural productivity.” *Id.* at 26,728.

1 Despite these findings, WDFW continued to implement hatchery programs using these out-of-
2 basin stocks and without undergoing review, approval, and restrictions required by the ESA.

3 4. Wild Fish Conservancy sued WDFW for operating these programs in violation of
4 the ESA; first in 2014 for the Chambers Creek winter steelhead programs and then in 2019 for
5 the Skamania summer steelhead programs. The consent decree reached in the latter of those
6 lawsuits required WDFW to, *inter alia*, discontinue releases of Skamania summer steelhead in
7 Puget Sound watersheds that are not authorized under the ESA with the exception of one final
8 release in 2019 to the North Fork Stillaguamish River and several releases to the Skykomish
9 River. For the Skykomish River, the consent decree allows for decreasing annual releases that
10 terminate with a release of 40,000 fish in 2022, after which releases are prohibited unless they
11 have been approved under the ESA.
12

13 5. Apparently determined to maintain an artificial steelhead propagation program on
14 the Skykomish River to support recreational fishing, WDFW submitted a hatchery and genetic
15 management plan (“HGMP”) dated April 12, 2019 to NMFS proposing to implement an
16 “integrated” South Fork Skykomish River summer steelhead program. As WDFW’s HGMP for
17 this new hatchery program recognizes, this hatchery program will “take” ESA-listed salmonids.
18 WDFW nonetheless commenced its new summer steelhead hatchery program on the South Fork
19 Skykomish River before NMFS reviewed the HGMP and before NMFS or the United States Fish
20 and Wildlife Service (“FWS”) authorized the new program to “take” ESA-listed species.
21

22 6. WDFW’s implementation of this program in the absence of ESA-review or
23 approval follows a long and disconcerting pattern of the agency’s willingness to violate the
24 ESA’s prohibition on unauthorized “take” of protected species when it comes to artificial fish
25 propagation.

26 7. Plaintiff Wild Fish Conservancy is concerned that the continued implementation
27 of the South Fork Skykomish River summer steelhead hatchery program, along with other
28 WDFW hatchery programs in the Puget Sound region, are harming wild salmonids and their

1 ability to recover, including threatened Puget Sound steelhead. Moreover, Wild Fish
2 Conservancy is disconcerted by WDFW's pattern showing the agency's willingness to violate
3 the ESA's prohibition against unauthorized "take" of protected species within the context of
4 artificial fish propagation.

5 8. This action challenges WDFW's failure to comply with the ESA in its
6 implementation of the South Fork Skykomish River summer steelhead program. Wild Fish
7 Conservancy seeks declaratory and injunctive relief requiring WDFW to comply with the ESA
8 and an award of litigation expenses, including fees and costs.

9 JURISDICTION AND VENUE

10 9. This Court has jurisdiction under section 11(g) of the ESA, 16 U.S.C. § 1540(g)
11 (citizen suit), and 28 U.S.C. § 1331 (federal question). The requested relief is also proper under
12 28 U.S.C. § 2201 (declaratory relief) and 28 U.S.C. § 2202 (injunctive relief). As required by the
13 ESA citizen suit provision, 16 U.S.C. § 1540(g)(2)(A)(i), Wild Fish Conservancy provided
14 60 days' notice of its intent to sue to WDFW and the Secretaries of the United States Department
15 of Commerce and the United States Department of the Interior through a letter dated and
16 postmarked December 2, 2020. A copy of that letter is attached as **Exhibit 1** to this complaint
17 and incorporated herein by this reference.

18 10. The Western District of Washington is the proper venue under 28 U.S.C.
19 § 1391(e) and 16 U.S.C. § 1540(g)(3)(A) because the violations alleged, and/or substantial parts
20 of the events and omissions giving rise to the claim, occurred and are occurring within such
21 District. This matter is properly assigned to a District Judge in Seattle under LCR 3(d) because a
22 substantial part of the events and omissions that give rise to the claim occurred within a county
23 for which actions are assigned to a district judge in Seattle. Specifically, the challenged hatchery
24 program is implemented primarily in Snohomish County.

PARTIES

11. Plaintiff Wild Fish Conservancy is a membership-based 501(c)(3) nonprofit organization incorporated in the State of Washington with its principal place of business in Duvall, Washington. Wild Fish Conservancy is dedicated to the preservation and recovery of Washington's native fish species and the ecosystems upon which those species depend. Wild Fish Conservancy brings this action on behalf of itself and its approximately 2,400 members. Wild Fish Conservancy changed its name from "Washington Trout" in 2007. As an environmental watchdog, Wild Fish Conservancy actively informs the public on matters affecting water quality, fish, and fish habitat in the State of Washington through publications, commentary to the press, and sponsorship of educational programs. Wild Fish Conservancy also conducts field research on wild fish populations and has designed and implemented habitat restoration projects. Wild Fish Conservancy advocates and publicly comments on federal and state actions that affect the region's native fish and ecosystems. Wild Fish Conservancy routinely seeks to compel government agencies to follow the laws designed to protect native fish species, particularly threatened and endangered species.

12. Wild Fish Conservancy's members regularly spend time in areas in and around Puget Sound and its tributaries, including the Skykomish and Snohomish Rivers and other watersheds where WDFW's hatchery steelhead programs are implemented. Wild Fish Conservancy's members intend to continue to visit these areas on a regular basis, including in the summer of 2021 and beyond. These members observe, study, photograph, and appreciate wildlife and wildlife habitat in and around these waters. These members also fish, hike, camp, swim, and snorkel in and around these waters. Wild Fish Conservancy's members would like to fish in these waters for wild Puget Sound steelhead, wild Puget Sound Chinook salmon, and wild bull trout, or increase opportunities for such activities, if those species were able to recover to a point where such activities would not impede the species' conservation and restoration.

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