

4(d) Rule Evaluation and Recommended Determination

FMEP Submitted by: Idaho Department of Fish and Game

Fisheries or Area: Snake River Basin

DPS/ESU affected: Snake River Basin Steelhead (*Oncorhynchus mykiss*)
Snake River Fall Chinook salmon (*O. tshawytscha*)
Snake River Spring-Summer Chinook Salmon (*O. tshawytscha*)
Snake River Sockeye Salmon (*O. nerka*)
Middle Columbia River Steelhead (*O. mykiss*)

4(d) Rule Limit: Limit 4

Date: March 14, 2019

Tracking Number: WCR-2018-10283

1 EVALUATION

The Idaho Department of Fish and Game (IDFG) submitted a Fisheries Management and Evaluation Plan (FMEP) for recreational steelhead fisheries in Idaho’s portion of the Snake River and its tributaries (IDFG 2018). IDFG’s FMEP was submitted to NOAA’s National Marine Fisheries Service (NMFS) in November 2018 for approval under limit 4 of the 4(d) Rule (50 CFR 223.203(b)(4); 65 FR 42422, July 10, 2000). The 4(d) Rule states that the prohibitions of paragraph (a) of the rule do not apply to fishery harvest activities when (1) Fisheries are managed in accordance with a NMFS-approved FMEP, and (2) Fisheries are implemented in accordance with a letter of concurrence from NMFS. NMFS will approve an FMEP if it adequately addresses the criteria specified in the 4(d) Rule.

1.1 Criterion (4)(i): Clearly defines its intended scope and area of impact, and sets forth the management objectives and the performance indicators for the plan

IDFG’s FMEP clearly defines the intended scope and area of impact by describing recreational mark-selective steelhead fisheries in specific areas of the Snake River (Table 1 and Figure 1). Only hatchery-origin steelhead, with a clipped adipose fin as evidenced by a healed scar, may be harvested. Steelhead without a clipped adipose fin as evidenced by a healed scar must be immediately released unharmed. Steelhead fishery management units addressed in this FMEP include the mainstem Snake River, lower mainstem Clearwater River, mainstem and Middle Fork Clearwater River, North Fork Clearwater River, South Fork Clearwater River, lower mainstem Salmon River, middle mainstem Salmon River, upper mainstem Salmon River, and Little Salmon River (section 1.2 of the FMEP). State regulations for fishing gear allow only barbless hooks, bait, lures, and jigs.

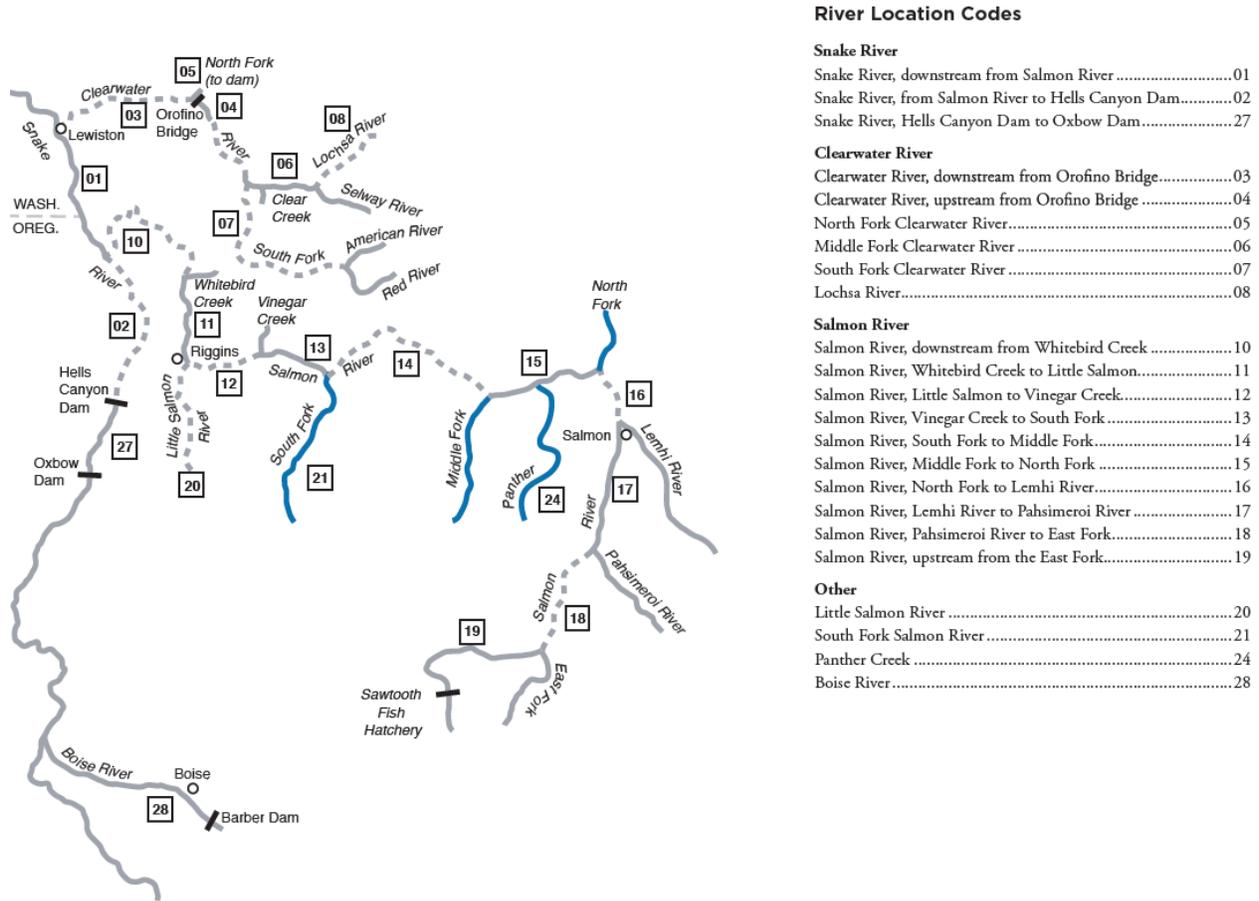
Table 1. General description of location and timing of fisheries included in IDFG’s FMEP.

Location (river sections) ¹	Timing ²
Mainstem Snake River (1, and 2)	August 1-April 30
Lower Mainstem Clearwater River (lower 3)	July 1-April 30
Mainstem and middle fork Clearwater River (upper 3, and 4)	July 1-April 30
North Fork Clearwater River (5)	July 1-April 30
South fork Clearwater River (7)	July 1-April 30
Lower mainstem Salmon River (10, 11, lower 12)	August 1-April 30
Middle mainstem Salmon River (upper 12, 13, 14)	August 1-March 31
Upper mainstem Salmon River (15-19)	August 1-April 30
Little Salmon River (20)	August 1-May 15
Non-anadromous waters; upstream of Hells Canyon Dam, and Boise and Payette Rivers	October 15-May 30

¹ The river sections identified within parentheses correlate with the numbered river locations identified in Figure 1.

² This period covers both catch-and-release and ad-clipped (hatchery) retention fishing.

Figure 1. Areas in Idaho open to state-managed recreational steelhead fisheries.



IDFG describes the management objectives of its FMEP as providing harvest opportunity for recreational fisheries in Idaho’s portion of the Snake River Basin in a manner that does not jeopardize anadromous species listed under the ESA. IDFG’s FMEP identifies eight performance indicators (section 1.1.1 of the FMEP) that are essential for evaluating fishery success and impacts to ESA-listed species.

1.1.1 Criterion 4(i)(A): Defines populations within affected listed [DPSs and] ESUs, taking into account spatial and temporal distribution, genetic and phenotypic diversity, and other appropriate identifiable unique biological and life history traits

IDFG’s FMEP uses the population designations identified by the Interior Columbia Technical Recovery Team (ICTRT 2003; ICTRT 2007) and adopted in NMFS’ salmon and steelhead recovery plans for Snake River species (section 1.3 of the FMEP). These population designations account for spatial and temporal distribution, genetic and phenotypic diversity, and other appropriate identifiable unique biological and life history traits.

1.1.2 Criterion 4(i)(B): Uses the concepts of “viable” and “critical” salmonid population thresholds, consistent with Viable Salmonid Populations (VSP) concepts in the technical document “Viable Salmonid Populations and the Recovery of Evolutionarily Significant Units” (McElhany et al. 2000)

IDFG’s FMEP considers the Interior Columbia Technical Recovery Team’s (ICTRT (2007) Minimum Abundance Thresholds (MAT; synonymous with viable) and proposes to use 30% of the MAT to define a Critical Abundance Threshold (CAT).

Regional forums, ESA recovery implementation, upcoming status reviews, and monitoring and evaluation efforts are currently underway and their results will be incorporated into the implementation of IDFG’s FMEP (as part of a basin-wide framework). This adaptive management approach is consistent with the guidelines provided in the VSP technical document (see page 30 in McElhany et al. 2000).

1.1.3 Criterion 4(i)(C): Sets escapement objectives or maximum exploitation rates for each management unit or population based on its status, and assures that those rates or objectives are not exceeded.

IDFG’s FMEP proposes to manage the steelhead fishery to no more than an average of 3.2% incidental mortality rate on the natural-origin steelhead that escape to Idaho. This rate is based on historical fishing impacts from non-tribal fishing in Idaho from 1990-1996 (section 1.4.1 of the FMEP). Any incidental mortality of steelhead during recreational retention fisheries for fall Chinook salmon in the Snake or Clearwater Rivers, or coho salmon in the Clearwater River would be included in this average 3.2% incidental mortality rate. Annual reporting would be used to monitor incidental mortality and ensure that the target rates are not exceeded. Furthermore, IDFG has committed to managing their fisheries within a basin-wide framework that would limit total impacts from all fishing parties (Hebdon 2019).

IDFG’s FMEP further proposes to manage the recreational steelhead fishery based on a 1.5% incidental mortality rate of natural-origin Snake River fall Chinook salmon that pass Lower Granite Dam. IDFG uses the interagency fall Chinook run reconstruction and creel survey data to estimate encounter rates and incidental mortality of natural-origin fall Chinook salmon. Any incidental mortality of fall Chinook salmon during fall Chinook salmon or coho salmon fisheries would be included in this 1.5% incidental mortality.

IDFG would also record and report any encounters of spring/summer Chinook and sockeye salmon. Encounters with these two species are unlikely to occur due to differences in timing of these species with the steelhead run and holding period, and spatial separation of sockeye salmon returning to spawn in Redfish Lake.

1.1.4 Criterion 4(i)(D): Displays a biologically based rationale demonstrating that the harvest management strategy will not appreciably reduce the likelihood of survival and recovery of the ESU in the wild, over the entire period of time the proposed harvest management strategy affects the population, including effects reasonably certain to occur after the proposed actions cease.

The FMEP includes a harvest management strategy, and NMFS completed a Biological Opinion on the effects of this FMEP on ESA-listed anadromous species in the Snake River Basin (NMFS 2019), and found that the action did not result in jeopardy or adverse modification of critical habitat for any of the four affected ESA-listed species. This Opinion also included FMEPs from Washington and Oregon as well as the Nez Perce Tribe, and analyzed an overall Snake River Basin steelhead fisheries framework. IDFG submitted a separate letter agreeing to manage their fisheries within the overall framework (Hebdon 2019). NMFS considered the impacts of the overall framework in its Biological Opinion and Environmental Assessment.

As part of the overall framework, all of the Snake Basin fishery managers will annually supply fishery harvest and natural-origin mortality data for the Snake Basin Steelhead Run Reconstruction modeling effort. In summary, this model uses abundances at Lower Granite Dam (LGR) because of the intensive sampling program operating on adult steelhead. This model then distributes natural-origin steelhead counts at LGR among the different populations by applying survival and movement probabilities. Escapement between Ice Harbor Dam (ICH) and LGR was estimated by moving fish downstream to ICH adding fisheries losses within this section of the Snake River. The model estimates escapement and losses upstream of LGR by moving fish forward (Stark et al. 2016). This allows for a complete view of the effects of all fisheries on natural-origin steelhead.

Fisheries described in this FMEP will affect only a small portion of the Snake River Steelhead DPS or Snake River Fall Chinook Salmon ESU. Because harvest rates and fishery impacts on steelhead and fall Chinook salmon are low, IDFG states that the FMEP is consistent with minimizing effects on listed species and does not jeopardize or preclude recovery through Department fishery management and activities in the other “H’s” (hatchery, hydropower, habitat). As early as the 1970s, IDFG implemented several conservation actions to the recreational steelhead fishery in response to declining wild steelhead runs. Previous restrictions since the 1970s incorporated into the FMEP proposal include reduction in the times and places where fishing can occur, gear restrictions, and a complete ban on harvest of natural-origin steelhead. IDFG has set seasons and area closures to protect adult natural-origin steelhead (section 1.2 of the FMEP).

IDFG fishing rules state that only hatchery steelhead with a clipped adipose fin (with a healed scar) may be kept. Harvest of adipose-clipped hatchery steelhead also removes potential hatchery spawners from natural spawning areas; high fractions of hatchery spawners can pose risks to diversity and long-term productivity in the receiving populations (ICTRT 2007). Harvest is one tool to manage for an acceptable proportion of hatchery spawners, as well as fulfilling the mandates of the mitigation hatcheries. In addition, substantial portions of the Salmon and Clearwater Rivers are managed with no hatchery steelhead programs (e.g., Lochsa, Selway, Middle Fork Salmon, and South Fork Salmon) and are closed to steelhead fishing, providing additional protection to natural-origin steelhead.

1.1.5 Criterion 4(i)(E): Includes effective monitoring and evaluation programs to assess compliance, effectiveness, and parameter validation.

Fisheries performance indicators in IDFG's FMEP include estimates of catch, catch rate, harvest, harvest rate, hooking mortality for released fish, and estimates of angler effort by location when available (section 3.1 of the FMEP). IDFG monitors incidental mortality on natural-origin steelhead using a roving creel survey and a post-season telephone survey. IDFG anticipates the same monitoring and reporting to continue under the FMEP for both steelhead and fall Chinook caught and released within the steelhead fishery.

Dam counts and trap sampling at LGR for steelhead adults, and examination of dorsal fin erosion for unclipped steelhead allows for estimation of natural- and hatchery-origin abundance. Parental Based Tagging (PBT) and Passive Integrated Transponder (PIT) tags sampling at LGR will be used to determine the proportion of hatchery- and natural-origin steelhead adults. Genetic Stock Identification (GSI) sampling at LGR will allow for partitioning the natural-origin steelhead run by MPG. GSI sampling combined with age from scale sampling allows for improved estimation of abundance and productivity. Dam counts, LGR trap sampling, and run reconstruction allows for (post-season) estimation of natural and hatchery run sizes of Snake River fall Chinook. PIT-tagged hatchery steelhead and fall Chinook allow for estimation of specific hatchery adult run-sizes and evaluation of FCRPS management actions (section 3.2 of the FMEP).

1.1.6 Criterion 4(i)(F): Provides for evaluating monitoring data and making any revisions of assumptions, management strategies, or objectives that data show are needed.

Each year IDFG will provide to NMFS an annual report in which they evaluate their monitoring data and determine whether any changes are needed to their assumptions, management strategies, or objectives as a result of new information.

1.1.7 Criterion 4(i)(G): Provides for effective enforcement, education, and coordination among involved jurisdictions.

IDFG maintains law enforcement staff in each regional office. Staff is assigned patrol duties on a priority basis. Law enforcement staff patrol the recreational fisheries both in uniform, and in plain clothes. In addition, IDFG biological staff is authorized to enforce fishing rules (section 3.4 of the FMEP).

IDFG maintains a proactive public education program to enhance the protection of listed fish, and to ensure compliance with protective rules. The activities are summarized below:

- 1) An aquatic education program for school age children.
- 2) Publication of information on Idaho's threatened and endangered species, including where they may be encountered, and species identification guides in our Fishing Season and Rules.
- 3) Discussions with anglers on these subjects when fishing, when at check stations, and other times and places.
- 4) Regional activities include posting of signs, issuing news releases, maintaining a website at <https://idfg.idaho.gov/fish/steelhead> and participating in radio programs.

In addition, the Idaho's Citizens Against Poaching program provides a key deterrent to deliberate illegal take of listed species. The low incidence of serious violations indicates that the public education programs and enforcement activities conducted by IDFG work effectively.

1.1.8 Criterion 4(i)(H): Includes restrictions on resident and anadromous species fisheries that minimize any take of listed species, including time, size, gear, and area restrictions.

The steelhead fisheries proposed in this FMEP result in varying degrees of incidental mortality of listed adult steelhead and salmon in the action area (see section 1.1.3 above). Under the FMEP, any natural-origin steelhead and salmon are required by IDFG to be released unharmed if caught.

Steelhead fisheries in this FMEP target hatchery-origin fish, and are subject to daily bag limits¹. In addition, steelhead fishing in many tributaries is prohibited. Gear type is also specified in the state regulations (e.g., barbless hooks only). We believe these measures minimize take of ESA-listed species, and were considered when making our no jeopardy determination in the associated Biological Opinion.

1.1.9 Criterion 4(i)(I): Is consistent with other plans and conditions established within any Federal court proceeding with continuing jurisdiction over tribal harvest allocations.

Columbia River fisheries are governed by the October 10, 1969, judgment entered in *U.S. v. Oregon*, Civil No. 68-513 (D. Or.), and subsequent orders in that case. Under court supervision, the parties to *U.S. v. Oregon* have managed fisheries through court-approved agreements. All IDFG-regulated anadromous fisheries in the Snake River Basin are conducted in cooperation with the parties of *U.S. v. Oregon* (section 1.1.3 of the FMEP).

1.2 Criterion (4)(ii): The state monitors the amount of take and provides to NMFS, on a regular basis, a report summarizing this information, as well as the implementation and effectiveness of the FMEP.

IDFG monitors incidental mortality of natural-origin steelhead that may occur from hooking and releasing fish, and will provide NMFS with annual reports (section 3.5 of the FMEP).

1.3 Criterion (4)(iii): The state confers with NMFS on its fishing regulation changes

IDFG will provide their triennial Snake River steelhead fishery rules to NMFS for review. In addition, they will consult with NMFS on any substantive new rule proposals. Proposals will be developed consistent with FMEP objectives (section 3.5.1 of the FMEP).

1.4 Criterion (4)(iv): Written concurrence

If the determination is made that the FMEP adequately addresses all of the criteria specified in limit 4 of the 4(d) Rule, NMFS will issue a letter of concurrence, which will specify the

¹ <https://idfg.idaho.gov/rules/fish>

necessary implementation and reporting requirements, to IDFG, at which time the FMEP will take effect.

1.5 Public Review and Comments

NMFS publically noticed receipt of this FMEP in the Federal Register (83 FR 55523, November 6, 2018). The public comment period expired on December 6, 2018, but was opened for an additional 4 days from December 10th to December 13th (83 FR 63587, December 11, 2018) in response to an extension request from the six non-governmental organizations. Over 1,200 comments were received during the public review period. NMFS considered the comments before recommending a final determination on IDFG's FMEP. IDFG also reviewed the comments and submitted a responses for NMFS' consideration.

2 RECOMMENDED DETERMINATION

As evaluated above, it is the recommendation of the Sustainable Fisheries Division that the Regional Administrator determine that the FMEP for steelhead recreational fisheries in Idaho's portion of the Snake River submitted by IDFG adequately addresses all of the criteria established for limit 4 of the 4(d) Rule. If the Regional Administrator so finds and approves the FMEP, the take prohibitions would not apply to fisheries implemented in accordance with the approved FMEP and NMFS' letter of concurrence.

3 LITERATURE CITED

- Hebdon, L. 2019. Letter to Allyson Purcell (NOAA) from Lance Hebdon (IDFG), regarding Snake River Steelhead Fishery Framework. February 28, 2019. 11p.
- ICTRT. 2003. Independent populations of Chinook, steelhead, and sockeye for listed Evolutionarily Significant Units within the interior Columbia River domain. Working draft. 180p.
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- IDFG. 2018. Fisheries Management and Evaluation Plan submitted under ESA Section 4(d). Updated 2018. IDFG Recreational Steelhead Fisheries. IDFG, Boise, Idaho. 32p.
- McElhany, P., M. H. Ruckelshaus, M. J. Ford, T. C. Wainwright, and E. P. Bjorkstedt. 2000. Viable Salmonid Populations and the Recovery of Evolutionarily Significant Units. U.S. Dept. of Commerce, NOAA Tech. Memo., NMFS-NWFSC-42. 174p.
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- Stark, E. J., and coauthors. 2016. Snake River Basin Steelhead 2013/2014 Run Reconstruction. Report to Bonneville Power Administration, Portland, Oregon. 37p.