

Teresa A. Eturaspe WDFW
Attn: SEPA Center
600 Capitol Way North
Olympia, WA 98501-1091
September 5, 2007

From: The Wild Steelhead Coalition

Re: Comments on the Draft EIS for the Proposed Statewide Steelhead Management Plan

Dear Ms. Eturapse,

The Wild Steelhead Coalition is a not-for-profit steelhead conservation organization made up primarily of concerned, passionate, and well informed steelhead anglers. Our organization formed in 2000 to advocate for an improved future for wild steelhead and steelhead fisheries in the Pacific Northwest. As engaged stakeholders in WDFW-sponsored forums for nearly a decade now, we are pleased to have this opportunity to comment on the Washington Department of Fish and Wildlife's (WDFW) Draft Environmental Impact Statement (DEIS) on its Statewide Steelhead Management Plan (SSMP).

The Wild Steelhead Coalition respectfully submits the following comments on the DEIS for the proposed Statewide Steelhead Management Plan. While we credit the department for recognizing the challenges facing this precious natural resource and making an effort to plan for a sustainable future, we find the SSMP and the DEIS to be inadequate basis upon which to pursue this goal. Specifically, the DEIS fails to provide a reasonable set of alternatives, and provides insufficient analysis to justify the rationale supporting selection of the preferred alternatives. We have identified several recurring themes that individually flaw this document. Taken together, these flaws represent a serious failure to meet the SEPA mandate for providing and critically evaluating reasonable alternatives for guiding the Statewide Steelhead Management Plan. Of the many flaws we have identified in this document, we view the following as critical:

- **The DEIS improperly treats the secondary goal of providing fishing opportunity as equal to WDFW's legislatively mandated primary goal of assuring healthy stocks of wild steelhead.**
- **The DEIS fails to acknowledge and analyze the proposed alternatives relative to compliance with the Endangered Species Act (ESA).**
- **Preferred alternatives should not have been selected for the four operational policies because critical information and analysis is missing from the proposed alternatives, and preferred alternatives for natural production, fishery management, and artificial production require stock-specific information.**
- **The DEIS and SSMP come before revisions and completion of the WDFW's Steelhead Science and Management review paper, most recently reviewed by the public in February 2007.**
- **The DEIS contains insufficient information regarding WDFW's habitat management authority and habitat condition to enable an informed analysis of habitat alternatives and the selection of a preferred alternative.**
- **The DEIS relies on a number of value-laden and unsubstantiated assertions and assumptions which undermine the credibility of the analysis. The lack of a critical evaluation of the performance of steelhead hatchery programs in meeting WDFW objectives is especially glaring, particularly when combined with proposed harvest practices.**

Due to these fundamental flaws, we believe that the DEIS and the SSMP do not present a legally or scientifically sound basis for future management. Because we feel that the DEIS is fundamentally flawed in so many respects, we recommend that WDFW step back, complete the science paper, continue developing the SSMP, and then issue a new DEIS that addresses our comments and the new information from the revised science paper and SSMP.

Our more specific comments follow in sections under the heading of the key themes listed above. A final section contains a brief summary of our major comments, concerns, and recommendations.

Specific Comments

1. The DEIS improperly treats the secondary goal of providing fishing opportunity as equal to WDFW's legislatively mandated primary goal of assuring healthy stocks of wild steelhead.

The SSMP objectives (p. 6, Section 1.2.3), accurately and appropriately establish the primacy of the goal of assuring healthy stocks of wild steelhead in Washington State, and the secondary goal of providing cultural and economic opportunity, which primarily means fishing opportunity. This is consistent with WDFW's statutory mandate set forth in RCW 77.04.012, which expressly subordinates uses of steelhead to the conservation of steelhead. Contrary to that required hierarchy, the DEIS states that the SSMP seeks to "balance" these two goals and that the four alternatives "were developed across a spectrum between these two goals." (p. 13). Thus, WDFW treats these two goals as competing and of equal weight, contrary to the legislative mandate.

SEPA regulations state that "[r]easonable alternatives shall include actions that could feasibly attain or approximate a proposal's objectives, but at a lower cost or decreased level of environmental degradation." WAC 197-11-440(5)(b). Alternative 4, which would maximize harvest opportunity, is patently inconsistent with the primary goal of protecting and restoring wild steelhead. In addition, it is contrary to the requirements of the ESA, compliance with which the DEIS properly states is an SSMP objective (p. 6). Accordingly, it is per se unreasonable and should not be included as an alternative.

Moreover, the treatment of these two goals as of equal weight skews the analysis of the alternatives throughout the document. This is most evident in the analysis of fisheries management and artificial production alternatives and the selection of a proposed alternative for these policies. In both cases, WDFW implies that despite the fact that the most conservative alternative (Alternative 1) is the best for meeting the primary goal of wild steelhead protection and recovery, it is not selected as the preferred alternative because of the potential impact on fishing opportunity. (pp. 47, 51). Alternative 2, the preferred alternative, is less protective of wild fish, but was presumably selected because it provides for greater fishing opportunity. If WDFW is going to select less protective policies in these two areas, it must provide a much more in-depth analysis explaining how adoption of those policies does not undermine the primary goal of wild steelhead protection and is consistent with its statutory mandate.

2. The DEIS fails to acknowledge and analyze the proposed alternatives relative to compliance with the Endangered Species Act (ESA)

As previously noted, one of the SSMP's goals set forth in Section 1.2.3 is to ensure compliance with federal and state law. It is surprising then that the alternatives analysis is almost completely devoid of ESA consistency analysis. Thus, with the exception of Alternative 4, it is not possible to determine whether the alternatives would comply with this federal law. This flaw must be remedied by selecting a range of alternatives that are consistent with legal mandates, including the ESA..

We are also concerned about the use of a phased EIS process for the SSMP. The WAC describes the required contents for an EIS that follows a non-project EIS as follows: "A nonproject proposal may be approved based on an EIS assessing its broad impacts. When a project is then proposed that is consistent with the approved nonproject action, the EIS on such a project shall focus on the impacts and alternatives including mitigation measures specific to the subsequent project and not analyzed in the nonproject EIS. The scope shall be limited accordingly." (WAC 197-11-443 (2)) We are concerned that given the extremely general set of alternatives and strategies described by WDFW, and despite substantial shortcomings in the analysis, any subsequent RMP may be considered "consistent", and thus not in need of detailed analysis for those topics that are ostensibly covered in this DEIS. As currently written, the DEIS provides a general menu of options, but little guidance on how the menu would likely be applied at a Regional level, relative to the local context and the status of affected populations of steelhead. In our view, none of the impacts or alternatives have been sufficiently analyzed in the nonproject proposal to be eligible for a 'free pass' as regional plans are developed.

3. Preferred alternatives should not have been selected for the four operational policies because critical information and analysis is missing, and preferred alternatives for natural production, fishery management, and artificial production require basin and/or stock-specific information.

SEPA does not require the selection of a preferred alternative. If a preferred alternative is to be selected it should be based on aspects of steelhead management for which there is sufficient information to guide decisions and/or for which a preferred approach can be properly determined based on basin and/or stock-specific information. Any preferred alternative will necessarily need to be consistent with and applicable to regional ESA recovery planning objectives and requirements, which can be quite variable depending on the status of the DPS in question and its component sub-populations. Given the present dearth of critical information on all four operational policies, it is clearly inappropriate to select preferred policy alternatives at this juncture.

Preferred policy alternatives for natural production, fishery management, and artificial production should be advanced in the Regional Management Plans (RMPs) consistent with the goal of maintaining the long term viability of steelhead populations and, where necessary, supporting their recovery under the ESA. The DEIS acknowledges as much, stating that basin and/or stock-specific analyses of natural production, harvest management, and artificial production are necessary to make an informed choice amongst alternative operational policies (see, for example, the discussion of natural production policy on page 37 noting that selection of an appropriate policy requires stock-specific analysis). It is also not appropriate to select a preferred habitat policy at this time for the reasons discussed below.

We are also concerned about the inclusion of economic measures related to lost revenues associated with harvest, while the economic costs of providing those opportunities are not presented in any way. The WAC clearly states that cost-benefit analyses are not required, but also states that "For purposes of complying with SEPA, the weighing of the merits and drawbacks of the various alternatives need not be displayed in a monetary cost-benefit analysis and should not be when there are important qualitative considerations." (WAC 197-11-450). Clearly, qualitative, non-economic considerations are at the forefront for the protection of a species that is in severe decline. We suggest that WDFW either 1) fully describe the economic costs and benefits associated with harvest, including production costs of hatchery fish on a per-harvestable-adult basis, or 2) omit reference to the economic benefits of harvest from the EIS.

4. The DEIS and SSMP come before revisions and completion of the WDFWs Steelhead Science and Management review paper, most recently reviewed by the public in February 2007.

We find it unacceptable that the WDFWs Steelhead Science and Management review paper is not yet complete, yet the agency has proceeded with the development of a draft SSMP and now this DEIS for the SSMP. We and other interested parties submitted detailed and constructive comments on the draft

Science paper (our comment letter is attached). The degree to which WDFW has considered these comments is unclear, but they are not reflected in the logic supporting the draft SSMP and the DEIS.

Why was the science document offered for public review and comment if WDFW was not prepared to recognize valuable stakeholder contributions? The contributing authors have invested considerable effort to educate themselves on the extent and the limits of the available science. Likewise, considerable effort has been invested in the review of the Science paper, and constructive comments have been offered in the spirit of collaboration. Yet we see little indication that these comments have been recognized or considered in the drafting of the SSMP or the DEIS. We are particularly interested in the reliance of the SSMP and the DEIS preferred alternative on continued hatchery production, which a wealth of scientific evidence indicates is detrimental to the viability of wild steelhead populations. WDFW has not provided convincing evidence that the unspecified hatchery reforms promised in the SSMP will overcome the considerable uncertainty surrounding the role of hatcheries in maintaining viable salmonid populations.

This failure to respect public process and the contribution of stakeholders is of deep concern to the Wild Steelhead Coalition. We feel strongly that responses to those comments and completion of the Science paper should be a top priority for WDFW before moving forward with adoption of a SSMP and associated EIS. We also ask WDFW to clarify that their actions to date regarding response to public comments are consistent with the requirements of the Administrative Procedures Act (RCW 34.05).

5. The DEIS relies on a number of value laden and unsubstantiated assertions and assumptions, which undermine the credibility of the analysis and could lead to arbitrary and capricious decision-making. The lack of a critical evaluation of the performance of steelhead hatchery programs in meeting WDFW objectives is especially glaring.

Throughout the DEIS there appear unsubstantiated assumptions or assertions that are apparently factored into the alternatives analysis. This is inconsistent with a primary purpose of SEPA, which is to ensure informed decision-making based on thorough, objective analysis. A partial list of such assumptions and assertions appear below:

- That carrying capacity can be accurately determined for each watershed (p. 38)
- That managing for wild steelhead protection and health could have negative impacts on other salmonid stocks or ecosystem health (p. 38)
- That an artificial production policy that gives primacy to the protection of wild stocks “could hinder the use of artificial production for stock recovery” (p. 51)
- That increasing hatchery production of steelhead smolts benefits steelhead fishing opportunities.

In 2004 we submitted a comment letter for the Grandy Creek DEIS (attached) wherein we showed a negative relationship between WDFW’s smolt releases and adult returns for both wild and hatchery steelhead in the Skagit Basin. Yet throughout the SSMP DEIS there is an unstated assumption that decreasing smolt releases will result in decreasing fishing opportunities, and increased hatchery smolt production will result in increased steelhead fishing opportunities. For which programs is this assumption valid? And under what conditions might we expect increased hatchery production of steelhead smolts to support WDFW steelhead management goals? Such assertions should be tested with an analysis of the extensive steelhead data that exists in WDFW’s archives. A meta-analysis of the performance of Washington’s steelhead hatchery programs wherein smolt release and adult return data are analyzed for each program, as well as annual smolt release and annual returns for wild steelhead, is sorely needed to critically evaluate the performance history for Washington’s steelhead hatchery programs. We have advocated such an analysis in our February 17, 2007 comment letter on the Draft Science paper (attached).

- That the reduction or loss of sportfishing harvest opportunity would have a severe economic impact (the unstated assumption being that catch and release fishing opportunities could not substitute for harvest fisheries) (p. 14, 49, 51)

This value-laden assumption is arbitrary, untested, and not supported by experience. The state of Montana effectively ceased hatchery production on its blue ribbon trout streams many years ago, despite similar refrains about the economic impacts on rural communities imposed by reduced fishing opportunity. This bold management decision has resulted in substantial increases in the abundance and productivity of valued sport fish populations. The predicted dire economic consequences for recreation dependent communities were never realized, in fact recreational uses have expanded in conjunction with the improved condition of the resource. We submit that a similar outcome is possible for steelhead in Washington State. If WDFW insists on maintaining this assumption as a basis for alternative evaluation, the potential economic benefits of catch and release fisheries on viable, sustainable wild steelhead populations should be given equal consideration.

6. The DEIS contains insufficient information regarding WDFW's habitat management authority and habitat condition to enable an informed analysis of habitat alternatives and the selection of a preferred alternative

a. The DEIS fails to identify several habitat protection measures available to WDFW

As the DEIS accurately notes, the protection and restoration of habitat is essential for achieving wild steelhead populations that meet VSP criteria. (p. 40). Habitat protection and restoration policy is appropriately established at the state level because WDFW's authority is established pursuant to state legislation and WDFW's habitat programs are developed with a statewide scope. Consequently, a comprehensive analysis of habitat policy is appropriate in this non-project EIS because basin and/or stock-specific information is not necessary to determine appropriate statewide habitat policy.

The DEIS contains insufficient information to enable an informed decision about habitat policy. First, it fails to identify all of the statutory and regulatory means by which the agency can protect habitat. In particular, water quantity is completely omitted from the habitat analysis (p. 40) despite the fact that WDFW has statutory authority to require the Department of Ecology to set instream flow rules where necessary to protect fish and wildlife. RCW 90.22.010.

Similarly, the DEIS does not mention Outstanding Resource Waters designations, an important and highly relevant tool available under the federal Clean Water Act to protect high-quality rivers that either provide cold water refugia for aquatic species or are of exceptional statewide ecological significance. 33 U.S.C. § 1370. Rivers designated as Outstanding Resource Waters are protected from future water quality degradation, and designation can be obtained by petitioning the Department of Ecology. In its supplement to the Puget Sound Chinook Recovery Plan, NOAA explicitly endorses use of this tool for Chinook recovery, and the same rationale applies with equal force to steelhead. The DEIS also fails to address the opportunity presented by the Endangered Species Act listings of many Washington wild steelhead stocks. WDFW has the opportunity to work directly with NOAA to ensure that "critical habitat" is appropriately designated and that strong habitat protection and restoration actions are included in steelhead recovery plans being developed by NOAA.

These authorities and opportunities – and any others that have not been mentioned – must be identified and analyzed before WDFW selects a habitat policy for the SSMP. We realize that there may be political resistance to some habitat protection measures WDFW could either implement or request, but that is not a legitimate basis for limiting the scope of analysis. (See WAC 197-11-402(10): "EISs shall serve as the means of assessing the environmental impact of proposed agency actions, rather than justifying decisions already made.")

Lastly, the DEIS also lacks a discussion of current habitat conditions relative to those necessary to achieve WDFW's primary goal of healthy wild steelhead populations.¹ For example, there is no discussion of the fact that most steelhead rivers either lack instream flow rules or have outdated instream flow rules based on flawed science. Such information provides a factual context or baseline for determining the appropriate policy.

b. The DEIS lacks a comprehensive analysis of WDFW's habitat protection authority under the Hydraulic Code and thus fails to provide sufficient information upon which to determine an appropriate policy

The DEIS gives just passing mention to the hydraulic permit approval (HPA) process, which WDFW is responsible for administering. The statute and implementing regulations are not presented so it is not possible to ascertain how useful this authority could be. Moreover, there is no discussion of the level of resources currently devoted to implementation of this program (or any of the other state programs identified), or of the adequacy of the law with respect to WDFW's ability to assure healthy wild steelhead populations. Without this essential information it is not possible for the public to provide meaningful comment or for WDFW to make informed policy decisions.

Had such an analysis been presented, it would have revealed major deficiencies in the law itself, the way it has been administered, and the resources available to administer it. Specifically, the law does not authorize WDFW to require mitigation for permitted projects beyond 10 years, there is no required evaluation of cumulative impacts, there is no civil stop work authority under the statute, insufficient resources are dedicated to implementing the program, and permits are almost never denied. This information is essential for an objective analysis of the adequacy of the program to inform policy-making.

Conclusion

The Wild Steelhead Coalition appreciates the opportunity to comment on the DEIS for the SSMP. While we applaud the efforts that WDFW has invested in the future of our wild steelhead resource, we feel that the SSMP and the DEIS require substantial revision to be compliant with state and federal regulations. Because we feel that the DEIS is fundamentally flawed in so many respects, we recommend that WDFW step back, complete the science paper, continue developing the SSMP, and then issue a new DEIS that addresses our comments and the new information from the revised science paper and SSMP. We encourage WDFW to address the concerns we have raised, and look forward to working with the agency to protect the future for wild steelhead and steelhead fisheries in Washington State.

Sincerely,

Rich Simms, President, Wild Steelhead Coalition

¹ The Regional Management Plans should include additional analysis of habitat conditions at the regional scale, which should guide the relative allocation of WDFW resources and selection of the specific habitat protection tools in each region. It bears emphasis, however, that the RMPs are not the place for establishing statewide habitat protection and restoration policy.