

“GREEN SHEET”

Meeting: May 5, 2005, Conference Call
Agenda item: Sale of Wild Shellfish – rule action
Prepared by: Evan Jacoby

Background: This is the fourth consideration by the Commission of rules that would legitimize the sale of commercial wild shellfish from private tidelands. “Wild” shellfish are shellfish that are naturally set on private tidelands that are not registered aquatic farms. Under the proposal, all clams, except geoducks, and oysters harvested from the tidelands within twelve months of farm registration, and geoducks within thirty six months, would be reported as wild harvest, would be required to be documented on shellfish receiving tickets, and would be subject to licensing and paying enhanced fish excise tax. After twelve and thirty six months, respectively, the harvest would be treated as private sector cultured aquatic products, and reported on quarterly aquatic farm reports. A provision of the rule allows “grandfathering.” This is the situation where persons have cultured product for some period of time, but either failed to register the farm or sold the farm to a new owner, which requires a new farm registration. Since all product harvested for the first twelve months after registration requires reporting as wild harvest, grandfathering actual cultured product serves the Department need to identify what level of wild harvest is occurring, and distinguishes wild shellfish from farm product.

Because there are competing interests from growers and treaty tribes, issues have been raised concerning mandatory surveys prior to harvest, notification between the growers and the tribes before tideland enhancement, and compliance with the federal provisions of the U.S. v. Washington Shellfish Implementation Order.

After multiple discussions with both growers and the tribes, the majority of issues have been addressed to the satisfaction of all parties. There are two remaining issues. First, the growers want the presumptive wild shellfish reporting period reduced from twelve and thirty-six months to six and twelve months. By contrast, the tribes want the presumptive wild shellfish reporting period to be twenty-four and sixty months. The Department believes twelve and thirty-six months are appropriate, as most hardshell clams and oysters are harvested at twelve months, and commercial geoducks can be grown in Puget Sound in thirty-six months. The second issue is grandfathering. The tribes disagree with the concept that a person can ignore the notice to the tribes and registration requirements and still report production as cultured product. The Department believes the registration requirement strictly applies to cultured product, and that harvest of wild shellfish does not require registration (although it would be foolish to fail to register, as licensing and taxation continue as long as the site is not a registered aquatic farm). Furthermore, the current aquatic farm rules which require new registration if the farm is sold would fail to properly identify cultured product if the new owner was forced to report production as wild. Lastly, notice requirements of the Implementation Order have been addressed by modifying the rules to provide copies to the tribes of both applications for an emerging commercial fishery license for wild shellfish harvest, and registrations as aquatic farms.

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Policy issue(s) you are bringing to the Commission for consideration: Establishing a new emerging commercial fishery for commercial harvest of wild embedded shellfish from private property.

Public involvement process used and what you learned: This proposal has been discussed in multiple meetings with both affected tribes and the growers. Two versions of the rule proposals have been mailed to over two hundred growers. Copies of the proposals have been given to Pierce County, the Department of Natural Resources, the Department of Health, and the Department of Agriculture.

Actions requested (identify the specific Commission decisions you are seeking): Adoption of wild shellfish harvest rules.

Draft motion language: Move to adopt amendments to WAC 220-52-018 as amended in OTS 6472.1 and WAC 220-52-020 as amended in OTS 6473.1 and adopt new WACs 220-88D-010, 220-88D-020, 220-88D-030, 220-88D-040, and 220-88D-050 as shown in OTS 6397.7.

Justification for Commission adoption (of rule): Provide for accounting mechanism for wild shellfish harvest. Allow for sale of commercial wild shellfish from private tidelands.