

7. Elwha River Fishing Curtailment – (Rule Adoption)

TABLE OF CONTENTS

	Page
Decision Page (Green Sheet)	1
CR-102.....	5
WAC 232-28-619 Washington food fish and game fish—Freshwater exceptions to statewide rules.....	7

“GREEN SHEET”

Meeting: February 4-5, 2011, Commission Meeting

Agenda item #7: Elwha River Fishing Curtailment – Rule Action

Staff Contact: Ron Warren, Regional Fish Program Manager, Fish Program
Kirt Hughes, Regional Fish Manager, Fish Program
Mike Gross, District Fish Biologist, Fish Program

Presenter(s): Ron Warren, Regional Fish Program Manager, Fish Program

Background:

Two dams that have blocked upstream migration of salmon and steelhead the Elwha River for nearly a century are scheduled to be removed beginning in November 2011. Removal of the 108-foot Elwha Dam and the 210-foot Glines Canyon Dam is the largest project of its type in U.S. history. The Elwha River is one of the only rivers in the Pacific Northwest to contain all five species of Pacific salmon, as well as steelhead, cutthroat and bull trout. Following the completion of this project these fish will again have access to more than 70 miles of spawning and rearing upriver of the lower dam.

The Elwha River Fish Restoration Plan (the Plan) (NOAA Technical Memorandum NMFS-NWFSC-90, April 2008) calls for a curtailment of fishing to protect fish runs during dam removal and maximize the number of fish available to spawn in the Elwha River watershed. The Plan was developed through the collaborative efforts of The Lower Elwha Klallam Tribe (LEKT), Olympic National Park (ONP) of the National Park Service, the Washington Department of Fish and Wildlife (WDFW), the U.S. Fish and Wildlife Service (USFWS), and the Northwest Fisheries Science Center (NWFSC) of the National Marine Fisheries Service (NOAA Fisheries Service). It is a scientific framework for restoring the ecosystem and fisheries on the Elwha River. It was developed in accordance with the Elwha River Ecosystem and Fisheries Restoration Act (Public Law 102-495). The Act provided funding for the federal acquisition of the Elwha and Glines Canyon dams and required a specific plan to achieve full restoration of the Elwha River ecosystem and fisheries.

Among the entities involved in drafting the Plan, LETK, ONP and WDFW have jurisdiction for resource management within the Elwha River watershed. Since the Plan was finalized in 2008, technical representatives for the entities have continued to define what a curtailment of fishing would look like and how each would implement restrictions across their jurisdiction. What has evolved at the technical level between the three entities is a plan for a complete fishing moratorium to extend from the fall of 2011 when dam removal begins and for a period of time anticipated to last five years. The moratorium is expected to apply to all fisheries in tributary and mainstem waters across the 321 square miles of the basin from the river mouth near Port Angeles to the headwaters in the Olympic Mountains. The moratorium may also include Lake Sutherland, which could play an important role in rebuilding sockeye runs once the dams are removed. At this time the LEKT and ONP have reached agreement at the

policy level to impose the full fishing moratorium in-river for a period of five years. Subsequent to this briefing the FWC will take action to address the proposed fishing moratorium for the in-river portions of the Elwha that WDFW has jurisdiction for. During this time, it is expected that the major threats from dam removal will subside. Anadromous fish will once again ascend into the headwater streams they once inhabited with the recolonization process well underway.

The decision to re-open fisheries will take an adaptive management approach. As recolonization occurs and 100 years of accumulated sediment is carried downstream managers will monitor changes in abundance and distribution to determine the future of fisheries. When it is determined that conditions are suitable for harvest opportunities to resume the Commission will entertain recommendations from staff and act on measures to appropriately balance harvest and recovery.

Policy issues:

The Elwha River Fish Restoration Plan presents technical recommendations intended to facilitate the recolonization of the Elwha River by anadromous salmonids. Those recommendations are curtailment of in-river fisheries beginning when dam removal is initiated and extending a period of five years. Further discussions between the Lower Elwha Tribe, Olympic National Park and WDFW have attempted to define the extent to which fisheries would be curtailed. The range of alternatives includes a full closure of all in-river and lake fisheries to alternative that would allow fishing to occur in Lake Sutherland with a full closure of all other in-river areas.

Public involvement process and outcome:

Regional staff hosted a public meeting on Dec. 15, 2010 in Port Angeles. The meeting was attended by approximately 125 people. More than 100 comments were received during the Written Comments Period which concluded January 1, 2011. A number of interested citizens attended the January 7, 2011 meeting of the Fish and Wildlife Commission in Olympia, many of them provided verbal testimony. Additional comments have been received since the January Commission meeting. The majority of comments through both written media and verbal testimony support the closure of the Elwha River system provided that Lake Sutherland remains open to fishing in some manner.

The Commission has asked staff to explore alternatives which would allow Lake Sutherland to remain open in some manner.

At the February 2011 meeting, staff will review and update the Commission regarding Public Comment, discussion with tribal co-managers and the National Park Service, and report on alternatives for Lake Sutherland.

Action requested:

Provide direction to staff regarding the specific code revisions to curtail fisheries.

Draft motion language:

I move to adopt permanent amendments to WAC 232-28-619 as presented by staff.

Justification for Commission Action:

This action is justified under RCW 77.12.047.

Communications Plan:

The public was advised through a press release on November 24th of the proposed fishing moratorium (<http://wdfw.wa.gov/news/release.php?id=nov2410b>). Public comment were solicited in the news release and during a public meeting in Port Angeles on December 15th, 2010. Public testimony was also heard during the January meeting of the Commission. Additional public comment will be take any time prior to final Commission action in February. The public may submit comment by mail, e-mail and phone.

Form updated 04/26/2010 - sdy



PROPOSED RULE MAKING

CR-102 (June 2004)

(Implements RCW 34.05.320)

Do NOT use for expedited rule making

Agency: Washington Department of Fish and Wildlife

Preproposal Statement of Inquiry was filed as WSR 10-19-110 on 9/21/10;
 or
 Expedited Rule Making--Proposed notice was filed as WSR _____; or
 Proposal is exempt under RCW 34.05.310(4).

Original Notice
 Supplemental Notice to WSR _____
 Continuance of WSR _____

Title of rule and other identifying information: (Describe Subject)

WAC 232-28-619, Washington food fish and game fish – Freshwater exceptions to statewide rules. The changes in this proposal are specific to waters of the Elwha River system from the mouth to the Olympic National Park boundary, including Lake Sutherland.

Hearing location(s):
 Natural Resources Building, Room 172
 1111 Washington St., SE
 Olympia, WA 98504

Date: January 7-8, 2011 Time: 8:30 a.m.

Submit written comments to:

Name: Lori Preuss, Rules Coordinator
 Address: 600 Capitol Way, N.
 Olympia WA 98501-1091
 E-mail: Lori.Preuss@dfw.wa.gov
 Fax: (360) 902-2155 by (date) December 31, 2010

Assistance for persons with disabilities: Contact

Susan Galloway by December 31, 2010
 at (360) 902-2267 or via TTY at 1-800-833-6388

Date of intended adoption: On or after February 4, 2011
 (Note: This is **NOT** the **effective** date)

Purpose of the proposal and its anticipated effects, including any changes in existing rules: The proposed rule change would close the portions of the Elwha River and its tributaries, including Lake Sutherland, to fishing where those waters are under state jurisdiction.

Reasons supporting proposal: These changes represent a component of the Elwha River restoration plan. The department, in conjunction with the Olympic National Park and the Lower Elwha Klallam Tribe, is recommending this closure to create a complete recreational, commercial, and subsistence fishing moratorium on the Elwha River system. The moratorium is anticipated to last five years, to provide maximum opportunity for survival and re-colonization of the middle and upper watershed by anadromous fish species that have been denied access since 1913 with the construction of the lower of two hydroelectric dams. The dams are scheduled to be removed beginning in 2011.

Statutory authority for adoption: RCW 77.04.012, 77.12.045, and 77.12.047

Statute being implemented: RCW 77.04.012, 77.12.045, and 77.12.047

Is rule necessary because of a:

Federal Law? Yes No
 Federal Court Decision? Yes No
 State Court Decision? Yes No

If yes, CITATION:

DATE
 December 1, 2010

NAME (type or print)
 Lori Preuss

SIGNATURE

TITLE
 Rules Coordinator

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
 STATE OF WASHINGTON
 FILED

DATE: December 01, 2010

TIME: 8:32 AM

WSR 10-24-101

(COMPLETE REVERSE SIDE)

Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters:

None.

Name of proponent: (person or organization) Washington Department of Fish and Wildlife

- Private
- Public
- Governmental

Name of agency personnel responsible for:

	Name	Office Location	Phone
Drafting.....	Michael Gross	48 Devonshire Road, Montesano, WA 98563	(360) 249-1210
Implementation....	James Scott	1111 Washington Street Olympia	(360) 902-2736
Enforcement.....	Bruce Bjork	1111 Washington Street Olympia	(360) 902-2373

Has a small business economic impact statement been prepared under chapter 19.85 RCW?

Yes. Attach copy of small business economic impact statement.

A copy of the statement may be obtained by contacting:

Name:

Address:

phone

fax

e-mail

No. Explain why no statement was prepared.

This proposal involves Sportfishing rules, not commercial fishing rules. As such, it is not expected to affect small businesses.

Is a cost-benefit analysis required under RCW 34.05.328?

Yes A preliminary cost-benefit analysis may be obtained by contacting:

Name:

Address:

phone () _____

fax () _____

e-mail _____

No: Please explain: This proposal does not involve hydraulics.

AMENDATORY SECTION (Amending Order 10-137, filed 5/27/10, effective 6/27/10)

WAC 232-28-619 Washington food fish and game fish--Freshwater exceptions to statewide rules. (1) All freshwater streams and lakes not listed as open for salmon fishing are closed to fishing for salmon.

(2) As used in this section, "lead jig" means a lure consisting of a hook permanently or temporarily attached directly to a lead weight by any method. "Lead weight" means material constructed of lead and applied to a fishing line or lure and designed to help keep the hook, bait, or lure underwater.

(3) Freshwater terminal gear restrictions: In all waters with freshwater terminal gear restrictions, including, but not limited to, selective gear rules, whitefish gear rules, single point barbless hooks required, fly-fishing only, and anti-snagging rules, violation of the gear rules is an infraction, punishable under RCW 77.15.160. It is unlawful to possess fish taken with gear in violation of the freshwater terminal gear restrictions. Possession of fish while using gear in violation of the freshwater terminal gear restrictions is a rebuttable presumption that the fish were taken with such gear. Possession of such fish is punishable under RCW 77.15.380 Unlawful recreational fishing in the second degree, unless the fish are taken in the amounts or manner to constitute a violation of RCW 77.15.370 Unlawful recreational fishing in the first degree.

~~((3))~~ (4) County freshwater exceptions to statewide rules:

(a) Adams and Grant counties: All seasons in specific freshwater exceptions to statewide rules apply to inlet and outlet streams of named lakes in Grant and Adams counties.

(b) Adams, Douglas, Franklin, Grant, and Okanogan counties, except Zosel Dam (Okanogan River): Lawful to fish to base of all dams.

(c) Ferry and Lincoln counties: Except those tributaries listed under specific water exceptions to statewide rules, all tributaries to Lake Roosevelt between Grand Coulee Dam and the State Highway 25 Bridge at Northport except Barnaby and Nancy creeks: Saturday before Memorial Day through October 31 season. Trout: Daily limit 5, no minimum size.

(d) Kitsap County and Mason County on Tahuya Peninsula west of Belfair-Bremerton Highway (S.R. 3): Beaver ponds: Last Saturday in April through October 31 season. Trout: No minimum length.

(e) Kitsap County and Mason County east of Belfair-Bremerton Highway (S.R. 3): Beaver ponds: First Saturday in June through October 31 season. Trout: No minimum length.

~~((4))~~ (5) Rivers, streams, and beaver ponds that drain into Puget Sound or the Strait of Juan de Fuca are closed to fishing

November 30 downstream of the confluence of the east and middle branches. Trout: Minimum length fourteen inches. Salmon: Open only October 1 through November 30 from Highway 105 Bridge to the confluence of the East and Middle Branches. Daily limit 2 fish. Release chum, Chinook, and wild coho.

Ell Lake (Okanogan County): Last Saturday in April through October 31 season. Selective gear rules. Unlawful to fish from a floating device equipped with an internal combustion motor. Trout: Daily limit one.

Ellen Lake (Ferry County): Last Saturday in April through October 31 season. All species: Catch and release except up to five rainbow trout may be retained.

Elliot Creek (Snohomish County) (Sauk River tributary): First Saturday in June through October 31 season. All species: Selective gear rules.

Elochoman River (Wahkiakum County): Closed waters: Waters from 100 feet above the upper hatchery rack downstream to the Elochoman Hatchery Bridge located 400 feet below the upper hatchery rack; waters from a point 50 feet above to 100 feet below the outlet pipes from the most downstream Elochoman Hatchery rearing pond and extending 30 feet out from the south bank of the river; waters between the department of fish and wildlife temporary rack downstream to Foster (Risk) Road Bridge while rack is installed in the river; mainstem waters from the confluence of the west fork to source.

From mouth to West Fork: The first Saturday in June through March 15 season. Anti-snagging rule, night closure, and stationary gear restriction August 1 through October 31. Trout: Release all fish except up to two hatchery steelhead may be retained per day. Salmon: Open only from the first Saturday in June through December 31. First Saturday in June through July 31, daily limit 6 hatchery Chinook, of which no more than 2 may be adults. August 1 through December 31, daily limit 6 fish, of which no more than 2 may be adult Chinook. Release chum, wild coho, and wild Chinook.

Eloika Lake (Spokane County): Crappie: Daily limit ten, minimum length nine inches.

Elwha River (Clallam County): Through February 28, 2012: From mouth to two hundred feet below the south spillway on the Aldwell Dam: October 1 through last day in February season. Fishing from any floating device prohibited. Trout: Minimum length fourteen inches. Salmon: Open only October 1 through November 15. Daily limit 6 coho salmon of which no more than 4 may be adult coho salmon.

From Lake Aldwell upstream to Olympic National Park boundary, including all tributaries: First Saturday in June through October 31 season. Selective gear rules. Unlawful to fish from a floating device equipped with an internal combustion motor. Trout except Eastern brook trout: Minimum length twelve inches. Eastern brook trout: No minimum size. Beginning March 1, 2012: From mouth upstream to Olympic National Park boundary, including all

tributaries and remaining waters of Lake Aldwell and Lake Mills: Closed waters. As the Elwha and Glines Canyon dams are removed, Lake Aldwell and Lake Mills will recede.

Empire Lake (Ferry County): Last Saturday in April through October 31 season.

Entiat River (Chelan County), from mouth to Entiat Falls: December 1 through March 31 season. Whitefish gear rules apply. Above Entiat Falls: Selective gear rules. Unlawful to fish from a floating device equipped with an internal combustion motor. Trout: Daily limit 5 trout, not more than one of which may be greater than 12 inches in length. Eastern brook trout not included in trout daily limit. Eastern brook trout daily limit ten. Once the daily limit of trout other than eastern brook trout has been achieved, the entire daily limit for trout other than eastern brook trout and eastern brook trout has been taken.

Ephrata Lake (Grant County): Closed waters.

Erie Lake (Skagit County): Last Saturday in April through October 31 season.

Evans Creek (Pierce County) (Carbon River tributary) from Carbon River-Fairfax Road upstream: First Saturday in June through October 31 season.

Failor Lake (Grays Harbor County): Last Saturday in April through October 31 season. Trout: No more than two over 15 inches in length may be retained per day.

Falls Creek (Snohomish County) (Sauk River tributary): First Saturday in June through October 31 season. All species: Selective gear rules.

Fan Lake (Pend Oreille County): Last Saturday in April through September 30 season. Fishing from a floating device equipped with an internal combustion motor prohibited.

Fazon Lake (Whatcom County): Fishing from any floating device prohibited from first Friday in October through January 15. Channel catfish: Daily and possession limit two.

Ferry Lake (Ferry County): Unlawful to use lead weights or lead jigs that measure 1 1/2 inch or less along the longest axis.

Fio Rito Lakes (Kittitas County): Fishing from a floating device equipped with an internal combustion motor prohibited.

Fish Lake (Chelan County): Trout: No more than two over fifteen inches in length may be retained. Perch: Daily limit 25.

Fish Lake (Ferry County): Last Saturday in April through October 31 season.

Fish Lake (Okanogan County): Last Saturday in April through October 31 season.

Fish Lake (Spokane County): Last Saturday in April through September 30 season. Fishing from a floating device equipped with

inches in length may be retained, except no size restriction for kokanee.

Susan Lake (Thurston County): Selective gear rules and release all fish.

Sutherland Lake (Clallam County): Chumming permitted. Beginning November 1, 2011: Closed waters.

Swale Creek (Klickitat County): Trout: Release all trout.

Swamp Creek (tributary to Sammamish River) (Snohomish/King counties): The first Saturday in June through August 31 season. Juveniles only.

Swan Lake (Ferry County): Last Saturday in April through October 31 season. Unlawful to use fishing tackle containing lead. Tackle includes, but is not limited to, weights, sinkers, jigs, lures, flies, and lead-core line.

Swan's Mill Pond (Stossel Creek) (King County): The first Saturday in June through October 31 season.

Swauk Creek (Kittitas County): Selective gear rules. Unlawful to fish from a floating device equipped with an internal combustion motor.

Swift Reservoir (Skamania County): Last Saturday in April through November 30 season. From posted markers below Eagle Cliff Bridge to Bridge: Selective gear rules. Salmon: Landlocked salmon rules apply.

Swofford Pond (Lewis County): Fishing from a floating device equipped with an internal combustion motor prohibited.