
Summary

Meeting dates: August 5, 2017

Agenda item: Delegation of Authority

Presenter(s): Joe Stohr, Deputy Director

Background summary:

The Fish and Wildlife Commission has broad statutory powers to govern the Department of Fish and Wildlife as provided under RCW 43.300 and Title 77 RCW. RCWs 43.300.040 and 77.04.020 authorize the Commission to delegate to the Director any powers or duties vested in the Commission. In order to assure the smooth and efficient transaction of department business, the Commission has previously determined that it is appropriate to delegate certain Commission authorities and duties to the Director. Any power or duty exercised by the Director pursuant to this Delegation of Authority shall be exercised consistent with relevant Commission policies, including any policy-specific delegations by the Commission.

The Director is recommending the Commission amend the Delegation of Authority by adding three new decision-making authorities: two related to rulemaking and one other routine action.

Policy issue(s) you are bringing to the Commission for consideration:

The Director requests the Commission delegate the following three items to the Director.

1. Rulemaking authority to adopt expedited rules as provided by RCW 34.05.353. The expedited rule procedure allows an agency to adopt certain permanent rules using a shorter and less intensive process. However, the expedited process can only be used in a limited number of situations as described below:

- The rule applies only to internal government operations that are not subject to violation by a person (what is necessary for the agency to operate and does not affect the public).
- The rule incorporates only federal or state law or other agency rules.
- The rule is correcting only typographical errors, making name or address changes, or clarifying the language of a rule without changing its effect.
- The content of the rule is explicitly and specifically dictated by statute (depends on how specific the statute is – must review on case-by-case basis).
- The rule was developed through negotiated or pilot rulemaking.

If a member of the public raises an objection during the expedited process, and the Department is unable to resolve that objection, the Department would then be required to convert the expedited rulemaking to a regular permanent rulemaking process.

2. The Director also recommends the Commission delegate rulemaking authority for a permanent rule related to the adoption of clam and oyster harvest seasons. State/Tribal Harvest Management Plans are completed in the late fall of each year. The changes to these harvest regulations are typically routine in nature. The Department is requesting this delegation to reduce the time required to promulgate regulations in order to have them in place and effect for the benefit of the public by the first of the following year.

If approved, the Director suggests addressing both of the above requests by amending the language under Section A. Rulemaking Authority.

3. The Director requests the Commission add the authority to decide how many and where to plant triploid trout in state waters to the Delegation of Authority. RCW 77.18.060 specifically provides that the Commission is to decide, after consultation with the Department, where and how many to stock. The agency believes this decision to be a routine action. The Commission previously delegated this decision to the Director in 2016.

If approved, the Director suggests adding a new subsection to Section K. Acquisition, Removal, Disposition, or Sale of Fish and Wildlife

Public involvement process used and what you learned:

N/A

Action requested:

Approve the additions to the Delegation of Authority as presented.

Draft motion language for August 21, 2015:

I move to amend the Delegation of Authority by adding to the Director's authorities, the authority to adopt expedited rules, to adopt permanent rules for the harvest of clams and oysters, and to allow the Director to determine when, where, and in what numbers, triploid trout may be planted.

Justification for Commission action:

In order to assure the smooth and efficient transaction of Department business, the Commission has determined that it is appropriate to delegate certain Commission authorities and duties to the Director.

Communications Plan:



State of Washington
Fish & Wildlife Commission

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DATE: August 5, 2017

TO: Jim Unsworth, Director
Washington Department of Fish and Wildlife

FROM: Brad Smith, Chair
Washington Fish and Wildlife Commission

SUBJECT: GENERAL DELEGATION OF AUTHORITY

The Fish and Wildlife Commission approved this Delegation of Authority in open session at the Commission's August 5, 2017 meeting.

The Fish and Wildlife Commission has broad statutory powers to govern the Department of Fish and Wildlife as provided under RCW 43.300 and Title 77 RCW. RCWs 43.300.040 and 77.04.020 authorize the Commission to delegate to the Director any powers or duties vested in the Commission. In order to assure the smooth and efficient transaction of Department business under Commission authority, the Commission has determined that it is appropriate to delegate certain Commission authorities and duties to the Director. Any power or duty exercised by the Director pursuant to this Delegation of Authority shall be exercised consistent with relevant Commission policies, including any policy-specific delegations by the Commission. This delegation supersedes and repeals the Commission's delegation of authority dated June 13, 2015.

For purpose of this document, "Commission" means the Fish and Wildlife Commission; "Director" means the Director of Fish and Wildlife; and "Department" means the Fish and Wildlife Commission, the Director, and all employees.

The Commission delegates the following powers and duties vested in the Commission by statute to the Director of the Department of Fish and Wildlife. This general delegation is subject to modification and repeal at any time. In the event of any conflict between this general delegation and any subsequent policy-specific delegation by the Commission, the policy-specific delegation will control.

DELEGATION OF AUTHORITY

August 5, 2017

Page 2

A. RULE MAKING AUTHORITY

1. General

The Director shall have the authority to adopt emergency rules in situations as defined in RCW 34.05.350. ~~including but not limited to rapidly changing in-season commercial and recreational fisheries and hunts, where the actions must be taken with limited available time.~~ **In addition, the Director shall have the authority to adopt expedited rules in situations as defined in RCW 34.05.353.**

2. Specific

The Director shall have the authority to adopt harvest rules for clam and oysters to support and facilitate State/Tribal Harvest Management Plans with Treaty Tribes under U.S. v. Washington.

The Director may act on the Commission's behalf in the certification of rules pursuant to RCW 77.04.130.

B. AUTHORITY TO ISSUE AND REVOKE LICENSES AND PERMITS

The Director is delegated authority to issue and revoke permits that the Commission is authorized to issue pursuant to Title 77 RCW, including but not limited to permits authorized by RCWs 77.12.047, 77.15.250, 77.15.253, and RCW 77.32.237.

The Director is authorized to make decisions on hunting and fishing license suspensions, revocations and denials under RCW 77.15, including but not limited to decisions to revoke and reinstate license privileges under RCW 77.15.710.

C. ADMINISTRATIVE HEARINGS

The Director may conduct administrative hearings as required by law or as otherwise appropriate to the exercise of the Director's authority under Title 77 RCW or under this Delegation of Authority, including but not limited to decisions on hunting and fishing license suspensions, revocations and denials under RCW 77.15, decisions on forfeiture of property under RCWs 77.15.070 and 77.15.085, damage claims under RCW 77.36, commercial license renewals under RCW 77.15.030, and trapping licenses under RCW 77.15.194.

D. INTER-JURISDICTIONAL COMPACTS/COUNCILS

1. Magnuson Fishery Conservation and Management Act

Pursuant to 16 U.S.C. § 1862, the Director is the "principal State official with marine fishery management responsibility and expertise" in Washington, and represents the State of Washington on the North Pacific Fishery Management Council (NPFMC) and Pacific

DELEGATION OF AUTHORITY

August 5, 2017

Page 3

Fishery Management Council (PFMC). The Director shall have the authority to adopt rules pertaining to harvest of fish and wildlife in the federal Exclusive Economic Zone (EEZ) by vessels or individuals registered or licensed under the laws of the state, and consistent with RCWs 77.12.045 and 77.12.047.

2. Interstate Compacts

The Director represents the State of Washington on the Columbia River Compact as provided in RCWs 77.75.010 and 77.75.020, and shall consult with the Fish and Wildlife Commission as needed.

The Director shall represent the State of Washington on the Pacific States Marine Fisheries Commission as provided in the Pacific States Marine Fisheries Compact under RCWs 77.75.030 and 77.75.040, and shall consult with the Fish and Wildlife Commission as needed.

3. United States and Canada Treaty Concerning Pacific Salmon

The Director shall consult with the Fish and Wildlife Commission in representing the State of Washington in Pacific Salmon Commission management forums. For sockeye and pink salmon in Puget Sound, the Director shall have the authority to authorize commercial fishing by rule, and determine the kind of gear that may be fished as authorized in RCWs 77.12.045, 77.50.010 and 77.75.140, consistent with federal regulations implementing recommendations of the Frasier River Panel.

4. International Pacific Halibut Commission

The Director or his designee shall have the authority to represent the Department at proceedings of the International Pacific Halibut Commission, and shall consult with the Fish and Wildlife Commission as needed.

E. AGREEMENTS

Except as otherwise provided for in this Delegation of Authority or in any policy-specific delegation by the Commission, the Commission reserves final approval authority for tribal, interstate, international, and any other department agreements relating to fish and wildlife, pursuant to RCW 77.04.055.

1. Agreements with the United States

The Director shall have the authority to make agreements with the United States to protect Columbia River fish as defined in RCW 77.12.285.

The Director may negotiate agreements with the United States Department of Defense to coordinate fishing in state waters as detailed in RCW 77.12.275.

DELEGATION OF AUTHORITY

August 5, 2017

Page 4

The Director may enter into agreements with the United States for the construction, maintenance, and operation of fish cultural stations, laboratories, and devices under RCW 77.12.285.

2. Treaty Indian Tribal Agreements

The Director shall have the authority to enter into co-management agreements with recognized treaty or executive order Indian tribes, including any such agreements required under U.S. v. Washington and U.S. v. Oregon. The Director shall annually report to the Commission on issues associated with co-management agreements.

3. Interlocal Cooperation Act Agreements

The Director shall have the authority to enter into Interlocal Cooperation Act agreements with other public agencies, pursuant to RCW 39.34, in order to facilitate the efficient operation of the Department.

4. Other Agreements

The Director is authorized to enter into other contracts and agreements on behalf of the Department. The Director is delegated authority to enter into contracts and agreements as necessary in order to carry out Commission policy, and as necessary or appropriate to carry out any authority herein delegated to the Director. Except as otherwise provided for in this Delegation of Authority, the Director shall have the authority, in consultation with the Commission, to enter into other agreements on behalf of the Commission.

F. ACCEPTANCE OF COMPENSATION, GIFTS AND GRANTS

The Director shall have the authority to receive funds from the United States for construction, maintenance and operation of fish cultural stations, laboratories, and devices under RCW 77.12.285.

The Director may acquire the use of lands where construction or improvement is to be carried on by the United States per RCW 77.12.285.

G. REPORTS TO THE LEGISLATURE

The Director shall submit required reports as provided in RCW 77.04.150 concerning the effectiveness of the disabled hunter and fisher advisory committee.

H. REAL AND PERSONAL PROPERTY

Acquisition of property is delegated or retained as follows. The Director may acquire rights in property that is less than a fee simple estate such as water rights, easements, leases, or licenses of land or structures and construct and maintain necessary facilities thereon.

Acquisition of fee simple estates must be approved by the Commission.

DELEGATION OF AUTHORITY

August 5, 2017

Page 5

Disposition of Department personal or real property or property interests are delegated or retained as follows. Disposition of the fee simple estate must be approved by the Commission. Subject to the restriction set forth below in this subsection, the Director is delegated authority to issue and amend leases, concessions, easements or licenses, issue crop share agreements, sell agricultural commodities, and execute land use agreements deemed appropriate under local land use requirements that do not exceed twenty years in duration so long as such amendments do not extend the term beyond twenty years. Any such property interest exceeding twenty years, including renewals thereof, must be approved by the Commission. The Director shall inform the Commission with a summary of transactions executed by the Director without Commission approval on at least a yearly basis.

The Director may approve timber sales less than or equal to 100,000 board feet for areas not under an approved management plan, pursuant to RCW 77.12.210, including where there is a need to salvage timber affected by fire, disease, or other disaster-related conditions. Where there is an approved management plan, the Director may approve timber sales not to exceed 1,000,000 board feet. The Director may grant permits for the removal from Department lands of downed timber for firewood. The Director may grant permits for the collection from Department lands of naturally shed antlers of deer, elk, and moose.

I. SPECIAL PROJECTS, PROPOSALS, POLICIES AND PLANS

The Director shall provide for the operation and support of Regional Fisheries Enhancement Groups and exercise all authority provided in RCWs 77.95.090-.110.

J. COLLECTION AND EXPENDITURES OF FUNDS

The Director shall have the authority to use money received under RCW 77.12.177 as an unanticipated receipt.

K. ACQUISITION, REMOVAL, DISPOSITION, OR SALE OF FISH AND WILDLIFE

The Director may specify by rule the statistical and biological reports required by fishers, dealers, boathouses or processors of wildlife, fish or shellfish under RCW 77.12.047.

The Director may prohibit the introduction, transportation, or transplanting of fish, shellfish, organisms, material, or other equipment which, in the Director's judgment, may transmit any disease or pests affecting food fish or shellfish under RCW 77.12.455.

The Director shall have the authority to determine the number of triploid trout and which waters of the state are appropriate for their stocking under RCW 77.18.060.

L. LITIGATION

DELEGATION OF AUTHORITY

August 5, 2017

Page 6

The Director may request the Attorney General to initiate litigation that relates to any power or duty of the Director or the Department, or any power or duty delegated by the Commission to the Director. The Director, in consultation with the Commission, may request the Attorney General to initiate litigation on behalf of the Commission.

The Director may request the Attorney General to prosecute criminal violations of RCW Title 77 and Department rules, pursuant to RCW 77.15.065.

The Director may negotiate and approve settlements of litigation and potential litigation, except as conditioned herein. The Director shall advise the Commission of any settlement approved by the Director valued at more than \$50,000. The Director shall consult with the Commission prior to entering into any settlement agreement that includes commitments relating to the exercise of Commission authority not delegated to the Director.

M. MISCELLANEOUS

All other duties of the Director and the Commission as described in Title 77 RCW remain in effect and, wherever the word Department is used, the Director is authorized to act. Additionally, the Director is authorized to delegate to employees of the Department any power or duty delegated to the Director by the Commission, unless the Commission expressly directs that the power or duty be exercised by the Director only.

cc: Fish and Wildlife Commission
Joe Shorin, Senior Assistant Attorney General