

Summary

Meeting dates: February 8-10, 2018

Agenda item: Clarifying the Limits of Keeping Salmon for Personal use during an Open Commercial Fishery – Briefing and Public Hearing.

Presenter(s): Mike Cenci, Deputy Chief, Enforcement Program

Background summary: Presently, commercial fishermen may take home a small part of their catch for personal consumption. Furthermore, all fish are accounted for on a commercial catch report, called a fish receiving ticket, regardless of how the catch is used (either sold or taken home for personal use). The information about fish taken for personal is captured under a “take home” provision printed on the fish receiving ticket itself. This is a sworn document.

Last summer, the commercial salmon trollers asked the department for clarification with respect to what the law allows, which is currently open to interpretation. Long-standing confusion by officers and industry alike compelled the department to draft a regulation that provides clearer guidance, so that the commercial fishing public does not inadvertently violate with the law. The proposal affects all commercial salmon sectors – trollers, gill netters, purse seiners, and reef net fishermen and clarifies how many salmon, along with species type, that commercial fishermen may take home for personal consumption during an open commercial fishery.

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

Proposing to amend and clarify one commercial fishing regulation.

Public involvement process used and what you learned:

The Enforcement Program worked directly with the Washington Troller’s Association and members of other commercial salmon sectors to draft the rule proposal. In addition, the department adhered to APA requirements and posted the pre-proposal and proposal online on the agency’s website and filed these documents with the state Code Reviser.

Overall, the department received three e-mails in opposition to the rule and one letter from a local association (copy attached). The three main arguments against the proposal from these individuals are: (1) a philosophy that all fish caught in a commercial fishery should be sold, and that none of the catch should be converted to personal use by the commercial harvester (2) the commercial sector will get an unfair advantage beyond what was allocated to the commercial fishery and (3) the department lacked legal authority to pass the existing permanent rule, and thus has no authority to amend or sustain it.

The department sought advice from the Attorney General’s Office relative legal questions raised by some members of the public. The issues raised above will be addressed as part of the briefing.

Action requested:

Briefing only

Draft motion language:

N/A

Justification for Commission action:

N/A

Communications Plan:

WDFW website and stakeholder involvement

Form revised 12/5/12



PROPOSED RULE MAKING

CR-102 (October 2017)
(Implements RCW 34.05.320)
Do NOT use for expedited rule making

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: December 18, 2017

TIME: 1:47 PM

WSR 18-01-095

Agency: Department of Fish and Wildlife (WDFW)

Original Notice

Supplemental Notice to WSR _____

Continuance of WSR _____

Preproposal Statement of Inquiry was filed as WSR 17-17-083 filed on August 16, 2017 ; or

Expedited Rule Making--Proposed notice was filed as WSR _____; or

Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1); or

Proposal is exempt under RCW _____.

Title of rule and other identifying information: (describe subject) The department is amending WAC 220-352-030 to allow crew members to retain salmon during a commercial salmon fishery.

Hearing location(s):

Date:	Time:	Location: (be specific)	Comment:
February 9-10, 2018	8:00 a.m.	Natural Resources Building Room 172 1111 Washington Street SE Olympia, WA 98501	

Date of intended adoption: March 17, 2018 (Note: This is NOT the effective date)

Submit written comments to:

Name: Scott Bird, WDFW Rules Coordinator
Address: 600 Capitol Way N. Olympia, WA 98501-1091
Email: Rules.Coordinator@dfw.wa.gov
Fax: (360) 902-2155
Other:
By (date) February 1, 2018

Assistance for persons with disabilities:

Contact Delores Noyes
Phone: (360) 902-2349
Fax:
TTY: (360) 902-2207
Email: Delores.Noyes@dfw.wa.gov
Other:
By (date) January 30, 2018

Purpose of the proposal and its anticipated effects, including any changes in existing rules: The department is amending its rules based on the long-standing practice of allowing crew members to retain a limited amount of salmon for personal use during a commercial salmon fishery.

Reasons supporting proposal: The rule is needed to clarify limits for salmon taken for personal use during an open commercial salmon fishery..

Statutory authority for adoption: RCW 77.04.012, 77.04.013, 77.04.055, and 77.12.047

Statute being implemented: None

Is rule necessary because of a:

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

If yes, CITATION:

Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters: None.

Name of proponent: (person or organization) Washington State Department of Fishing and Wildlife (WDFW) Private Public Governmental

Name of agency personnel responsible for:

	Name	Office Location	Phone
Drafting:	Deputy Chief Mike Cenci	1111 Washington Street, Olympia, WA 98501	360-902-2938
Implementation:	Deputy Chief Mike Cenci	1111 Washington Street, Olympia, WA 98501	360-902-2938
Enforcement:	Chief Steve Bear	1111 Washington Street, Olympia, WA 98501	360-902-2373

Is a school district fiscal impact statement required under RCW 28A.305.135? Yes No

If yes, insert statement here:

The public may obtain a copy of the school district fiscal impact statement by contacting:

Name:
Address:
Phone:
Fax:
TTY:
Email:
Other:

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:
TTY:
Email:
Other:

No: Please explain: The proposed rule changes do not affect hydraulics.

Regulatory Fairness Act Cost Considerations for a Small Business Economic Impact Statement:

This rule proposal, or portions of the proposal, **may be exempt** from requirements of the Regulatory Fairness Act (see chapter 19.85 RCW). Please check the box for any applicable exemption(s):

This rule proposal, or portions of the proposal, is exempt under RCW 19.85.061 because this rule making is being adopted solely to conform and/or comply with federal statute or regulations. Please cite the specific federal statute or regulation this rule is being adopted to conform or comply with, and describe the consequences to the state if the rule is not adopted.

Citation and description:

This rule proposal, or portions of the proposal, is exempt because the agency has completed the pilot rule process defined by RCW 34.05.313 before filing the notice of this proposed rule.

This rule proposal, or portions of the proposal, is exempt under the provisions of RCW 15.65.570(2) because it was adopted by a referendum.

This rule proposal, or portions of the proposal, is exempt under RCW 19.85.025(3). Check all that apply:

- | | |
|---|--|
| <input type="checkbox"/> RCW 34.05.310 (4)(b)
(Internal government operations) | <input type="checkbox"/> RCW 34.05.310 (4)(e)
(Dictated by statute) |
| <input type="checkbox"/> RCW 34.05.310 (4)(c)
(Incorporation by reference) | <input type="checkbox"/> RCW 34.05.310 (4)(f)
(Set or adjust fees) |
| <input type="checkbox"/> RCW 34.05.310 (4)(d)
(Correct or clarify language) | <input type="checkbox"/> RCW 34.05.310 (4)(g)
((i) Relating to agency hearings; or (ii) process requirements for applying to an agency for a license or permit) |

This rule proposal, or portions of the proposal, is exempt under RCW _____.

Explanation of exemptions, if necessary:

COMPLETE THIS SECTION ONLY IF NO EXEMPTION APPLIES

If the proposed rule is **not exempt**, does it impose more-than-minor costs (as defined by RCW 19.85.020(2)) on businesses?

- No Briefly summarize the agency's analysis showing how costs were calculated. There are no known costs to individual boat owners/operators for implementing this rule.
- Yes Calculations show the rule proposal likely imposes more-than-minor cost to businesses, and a small business economic impact statement is required. Insert statement here:

The public may obtain a copy of the small business economic impact statement or the detailed cost calculations by contacting:

Name:
Address:
Phone:
Fax:
TTY:
Email:
Other:

Date: December 18, 2017

Name: Scott Bird

Title: Rules Coordinator

Signature:



AMENDATORY SECTION (Amending WSR 17-22-100, filed 10/30/17, effective 1/1/18)

WAC 220-354-030 Sale and purchase of commercial caught salmon.

(1) It is unlawful for any person licensed to take salmon for commercial purposes as required under chapter 77.65 RCW to:

(a) Retain for personal use more than ~~((the equivalent of one daily sport bag limit for the area being fished. All salmon taken under commercial license must be recorded on state of Washington fish receiving tickets. The daily limit and possession limit described in this subsection also apply to crew members of the licensed fishing vessel))~~ three salmon per landing and delivery, regardless of species, provided that:

(i) The commercial season is open for the species taken; and

(ii) The fish retained are lawful to possess when taken by the gear type for which the person is licensed to fish; and

(iii) The daily limit and possession limit described in this subsection also apply to crew members of the licensed fishing vessel.

(b) Fail to report and document all salmon taken during a commercial fishery on state of Washington fish receiving tickets, including fish retained for personal use.

~~((b))~~ (c) Sell any salmon ((he takes)) taken under such license to anyone other than a wholesale fish buyer located within or outside the state of Washington: ((Provided, That a person who is himself a wholesale fish buyer may sell his catch to individuals or corporations other than wholesale fish buyer)) Except that a person who is licensed as a wholesale fish dealer under the provisions of RCW 77.65.280 may sell his catch to individuals or corporations other than licensed wholesale fish dealers.

~~((e))~~ (d) Sell, barter or attempt to sell or barter salmon eggs that have been removed from the body cavity of salmon unless all carcasses from which eggs have been removed are sold to the same buyer except this subsection does not apply to troll caught salmon or the eggs from such salmon.

~~((d))~~ (e) Discard salmon that may be lawfully retained except fishers may discard salmon that are unmarketable due to pinniped predation.

(2) It is unlawful for a wholesale fish buyer to purchase or attempt to purchase salmon eggs without also purchasing all male and female salmon taken by the fisher, including the salmon carcasses from which the eggs were removed.

(3) Violation of subsection (1)(a) of this section is punishable under RCW 77.15.550 Violation of commercial fishing area or time—Penalty.

(4) Violation of subsection (1)(b) of this section is punishable under RCW 77.15.280 Reporting of fish or wildlife harvest—Rules violation—Penalty.

(5) Violation of subsection (1)(c) of this section is punishable under RCW 77.15.620 Engaging in fish dealing activity—Unlicensed—Penalty.

(6) Violation of subsections (1)(d) and (2) of this section are punishable under RCW 77.15.260 Unlawful trafficking in fish, shellfish, or wildlife—Penalty.

(7) Violation of subsection (1)(e) of this section is punishable under RCW 77.15.170 Waste of fish and wildlife—Penalty.