

Summary Sheet

Meeting dates: April 5, 2019

Agenda item: Requirements for Testing Commercial Fishing Gear – Briefing, Public Hearing and Decision – Briefing and Public Hearing

Presenter(s): Sgt. Erik Olson, Region 4 Fish and Wildlife Enforcement Program,

Background summary:

Under WAC 220-353-080, commercial fishing boat owners and operators are required to notify DFW Police before testing their commercial fishing gear on the water. The failure to notify the department is a gross misdemeanor under RCWs 77.15.520, 77.15.550 or 77.15.589.

Currently, some commercial fishing boat owners or operators do not adequately notify the department before testing their gear. Based on the current rule, here is a common example which illustrates why the rule needs to be amended: Once confronted by DFW Police on the water, a commercial fishing boat owner or operator will claim that he or she left a message on department voicemail the night before (after hours for WILDCOMM staff). Often, this information is impossible for the DFW officer to verify at the time. By establishing more contact information and requirements in rule, the department will improve notification by commercial fishing boat owners and operators and avoid unnecessary criminal prosecution.

At this meeting, department staff will recommend that the Commission adopt an amendment that would provide more detailed information about scheduling and testing commercial fishing gear as set forth in the revision to WAC 220-353-080.

Staff recommendation:

Adopt the regulation change as proposed.

Policy issue(s) and expected outcome:

By adopting this rule change, the Commission will improve communication between commercial fishing boat owners and operators and DFW Police for the purpose of testing fishing gear on the water. With DFW Police's limited marine staff, this added knowledge will help inform DFW officers about legitimate gear testing activities versus individuals who may be trying to hide poaching activities by feigning that they are testing their commercial gear.

Although most of the department's commercial statutes are strict liability crimes in RCW chapter 77.15, the reality is that most county prosecutors require proving some level of intent by the individual defendant. If the department can prove that commercial fishing boat owners and operators called or e-mailed the department in advance of taking their boat on the water to test gear, then the department could avoid time-consuming investigations and unnecessary criminal prosecutions

Fiscal impacts of agency implementation:

The proposed rule change would not have any fiscal impact.

Public involvement process used and what you learned:

The department notified the public about the rule change through the Code Reviser and the department's website beginning on January 23, 2018. To date, the department has not received any comments about the proposed rule change.

Action requested and/or proposed next steps:

Department staff is recommending that the Commission consider adoption of the proposed amendment to WAC 220-353-080.

Draft motion language:

Motion: I move to adopt the amended rule as presented by staff.

Post decision communications plan:

Department staff will be contacting commercial fishing boat owners and operators to inform them of the new methods and requirements of communicating with DFW Police about testing their gear on the water. Furthermore, the department's adopted rule will be posted on the department website.