

April 13, 2004

Washington State Fish and Wildlife Commission

ATTN: Commission Members

600 Capital Way North

Olympia, WA 98501

Dear Members of the Commission:

We are writing to express our disapproval of the commission's action to institute a two year ban on the retention of wild steelhead on western Olympic Peninsula rivers. We believe the commission's action violated the Administrative Procedures Act, is unsupported by fish management science and is contrary to state law expressed in RCW 77.

This letter will clarify the relationship between the legislature and the commission and then explain the reasons for the opposition to the ban on wild steelhead retention.

RCW 77.04.012 defines the mandate of the department and commission when it states:

*"The commission may authorize the taking of wildlife, food fish game fish and shellfish only at times or places or in manners or quantities, as in the judgment of the commission does not impair the resource."*

*"The commission shall attempt to maximize the public recreational game fishing and hunting opportunities of all citizens... ."*

RCW 77.04.013 further clarifies the legislature's intent saying:

*"The legislature supports the recommendations of the state fish and wildlife commission with regard to the commission's responsibilities in the merged department of fish and wildlife. It is the intent of the legislature that, beginning July 1, 1996, the commission assume regulatory authority for food fish and shellfish in addition to its existing authority for game fish and wildlife. It is also the intent of the legislature to provide to the commission the authority to review and approve department agreements, to review and approve the department's budget proposals, to adopt rules for*

*the department, and to select commission staff and the director of the department."*

*"The legislature finds that all fish, shellfish, and wildlife species should be managed under a single comprehensive set of goals, policies, and objectives, and that the decision-making authority should rest with the fish and wildlife commission. The commission acts in an open and deliberative process that encourages public involvement and increases public confidence in department decision making."*

RCW 77.04.055 sets out the duties of the commission:

*"Commission - Duties, (1) In establishing policies to preserve, protect, and*

*perpetuate wildlife, fish, and wildlife and fish habitat, the commission shall*

*meet annually with the governor to:*

*(a) Review and prescribe basic goals and objectives related to those*

*policies; and*

*(b) Review the performance of the department in implementing fish and wildlife policies.*

*The commission shall maximize fishing, hunting, and outdoor recreational*

*opportunities compatible with healthy fish and wildlife populations.*

*(2) The commission shall establish hunting, trapping, and fishing seasons*

*and prescribe the time, place, manner and methods that may be used to harvest*

*or enjoy game fish and wildlife.*

*(3) The commission shall establish provisions regulating food fish and shellfish*

*as provided in RCW 77.12.047.*

*(4) The commission shall have final approval authority for tribal, interstate,*

*international, and any other department agreements relating to fish and wildlife.*

*(5) The commission shall adopt rules to implement the state's fish and wildlife*

*laws.*

*(6) The commission shall have the final approval authority for the department's*

*budget proposals.*

*(7) The commission shall select its own staff and shall appoint the director of*

*the department. The director and commission staff shall serve at the pleasure*

*of the commission."*

Conversations with commissioners reveal the commission believes it is a policy making body. This is not the case. The state constitution clearly gives the legislature the job of creating public policy. The commission has the job "In establishing policy to preserve, protect and perpetuate wildlife, fish, and wildlife and fish habitat" of meeting with the governor annually to review and provide basic goals and objectives; and to review the performance of the department in implementing those policies. Changes in policy direction are to be presented to the governor and the legislature for enactment into law. The commission has no ability to create its own policy and is limited to the role of a consultant in presenting new directions it feels the state should follow. Changes from existing legislative direction to those new directions are not to be pursued unless legislation is enacted giving the commission authority to implement the change.

With this in mind, the commission's decision to ban retention of wild steelhead for two years is a policy change made without legislative approval. In fact, legislators have consistently told the commission over a two year period that a rule of this type would be considered a policy change and further indicated that legislative approval would not be forthcoming unless WDFW fish management showed the runs were in

trouble. Wild steelhead runs on the western Olympic Peninsula rivers are not endangered. According to WDFW and tribal biologists they are not impaired and are capable of supporting the limited retention called for in 2003-2004 fishing regulations. Therefore, the decision violates the legislative directive that the commission *"SHALL" attempt to maximize the public recreational game fishing and hunting opportunities of all citizens...* AND the commissions duty that it *"shall maximize fishing, hunting, and outdoor recreational opportunities compatible with healthy fish and wildlife populations."*

The commission's failure to consult coastal Indian tribal co-managers when considering the ban violates federal court requirements for co-management of the runs under US v Washington.

The commission's failure to provide adequate public notice that the rule would be considered is at least a violation of the spirit of the Administrative Procedures Act if not an outright violation of RCW 77.04.130. It is also a violation of the public's intent for an open commission process as expressed in R-45 (RCW 77.04.013) that specifies *"The commission acts in an open and deliberative process that encourages public involvement and increases public confidence in department decision making."*

The legislature spends a good deal of taxpayer money to employ wildlife managers at WDFW. The ban ignores the science presented by these managers and in doing so brings into question the commission's commitment to sound wildlife management. The legislature has also spent a great deal of money on salmon recovery. One must question why, if the commission is going to prevent fishers from retaining fish from healthy runs.

In conclusion, we feel the commission short circuited the legislative process when it adopted the rule. The rule should be rescinded and if the commission still believes it is necessary should be submitted to the legislature as request legislation in time for the 2005 Legislative session. We look forward to your response.

Sincerely,

Reps who have signed: Buck, Sump, Blake, Schoesler, Pearson, Kessler, Orcutt, Armstrong, Hatfield, Hinkle, [Clements](#)

Senators who have signed: Sheldon, Morton, Hewitt, Hargrove, Doumit, Honeyford, McCaslin