

Agenda Item Summary

BACKGROUND

Oregon Administrative Rules allow any person to request that the Oregon Fish and Wildlife Commission (Commission) adopt an administrative rule by filing a petition as described in the Administrative Procedures Act (APA). On December 4, 2009, the Commission received a petition from Jeff Breithbarth and Wayne Riley to amend a rule prohibiting use of gaffs to land hooked salmon, steelhead or other fresh water game fish in inland or ocean fisheries. The proposed rule would allow gaffs to be used to land game fish which are legal to retain. The APA requires the Commission to seek public comment and respond to the request for rule change within 90 days.

The current rule was adopted in August 2008 as part of Oregon Department of Fish and Wildlife's (ODFW) major Public Process for angling regulation development and is included below.

2010 Oregon Sport Fishing Regulations, Page 9, General Regulations; Harvest Methods, Hours and Restrictions

2. Attempt to snag, spear, gaff, net, trap, club, shoot or ensnare any game fish. A net may be used to land legally hooked fish. A gaff may not be used to land hooked salmon, steelhead or other freshwater game fish in inland or ocean fisheries;

The rule was adopted as a staff proposal with the intent of clarifying under what circumstances gaffs could be used to legally land salmon and steelhead and to reduce mortality of released game fish in selective fisheries.

The decision before the Commission under this exhibit item is whether to accept the petition and initiate rulemaking or deny the petition and retain the gaff rule as adopted in 2009.

PUBLIC INVOLVEMENT

In development of the 2009 use of gaff regulation, an extensive public involvement process was conducted prior to the Commission adopting the 2009 Oregon Sport Fishing Regulations.

The public has an opportunity to comment on the rule proposed in the petition as part of this Commission meeting. Prior to this meeting, information about the petition and the Commission's consideration of this petition was distributed in a news release and also posted on the ODFW website.

ISSUE 1

CONSIDERATION OF PETITION TO MODIFY RULE REGARDING USE OF GAFF TO LAND GAME FISH

ANALYSIS

The Attorney General has adopted a uniform rule regarding disposition of rulemaking petitions, Oregon Administrative Rule (OAR) 137-001-0070.

All agencies must apply this rule as written. The petition received from Mr. Breithbarth and Mr. Riley substantially compels with the rule requirements.

The petitioners are requesting that the current gaff rule be amended to read as follows (Attachment 2): *A gaff may not be used to land a hooked **illegal** salmon, steelhead or other freshwater game fish in inland or ocean fisheries.*

The petitioner's justification for the amended gaff rule is also shown in Attachment 2 and states that the current regulation is putting the lives of fishermen in danger.

Staff's preliminary analysis of the petition is based on the criteria outlined in OAR 137-001-0070. The purpose of this agenda item is to solicit public comment on these five issues, as required by OAR 137-001-0070(2).

- a) Options for achieving the existing rule's substantive goals while reducing the negative economic impact on businesses.
Analysis: The current rule and the proposed amendment would all equally affect small businesses.
- b) The continued need for the existing rule.
Analysis: The current rule must continue to prevent the inadvertent gaffing of game fish required to be released unharmed. This proposed change would still prohibit use of gaffs to land freshwater game fish that are illegal, but does not specify clearly what an "illegal" fish is. A game fish may be illegal to retain for several reasons including species, length, and fin-mark. Anglers can not always readily distinguish these characteristics of a fish; therefore inadvertent gaffing of illegal fish can occur causing injury or mortality to fish required to be released unharmed.
- c) The complexity of the existing rule.
Analysis: The amended rule adds complexity in that the term "illegal" has multiple implications and may not be entirely clear to the angling public as to what would constitute an illegal fish. Fish that cannot be retained are still legal to fish for, but must be released unharmed. The proposed rule would seem to be somewhat internally contradictory.
- d) The extent to which the existing rule overlaps, duplicates or conflicts with other state or federal rules and with local government regulations
Analysis: No other state or local government regulates game fish harvest in Oregon regulated waters. The existing rule does not overlap, duplicate, or conflict with any other federal rule.
- e) The degree to which technology, economic conditions or other factors have changed in the subject area affected by the existing rule, since the agency adopted the rule.
Analysis: Neither the technology nor the economics have changed in a way that affects this question since the Commission originally adopted the gaff rule in September of 2009.

In summary, the current use of gaffs in salmon and steelhead fisheries is very limited. Public testimony during the 2009 Public Process indicated that eliminating the use of gaffs to land game fish would have little impact on the angling public since use of gaffs has diminished greatly and now most anglers use nets to land their catch, facilitating the release of game fish required to be released unharmed. The current gaff rule was designed to eliminate the inadvertent or intentional gaffing of game fish which are required by rule to be released. Selective fisheries for marked steelhead are in place in most areas of the state and the number of selective salmon fisheries has increased in response to the need to reduce fishery impacts on native salmon stocks.

OPTIONS

1. Accept the petition and direct the staff to initiate rulemaking consistent with Commission direction.
2. Deny the petition.

**STAFF
RECOMMENDATION**

1. Option 2.

DRAFT MOTION	I move to deny the petition submitted by Mr. Jeff Breithbarth and Mr. Wayne Riley and direct the Director to notify the petitioner of the Commission's decision in writing.
EFFECTIVE DATE	N/A