

Agenda Item Summary

BACKGROUND

Prior to 1975, ORS 509.030 allowed the purchase and sale of steelhead “taken as incidental catch in the operation of any fishing gear during any lawful open fishing season, by any person having in possession a valid license...” However, since steelhead were classified as a game fish, the statute directed that “the commission...use all reasonable means to regulate the incidental take... by commercial fishing gear, consistent with continuing an optimum legal commercial fishery of food fish...”

In November 1974, State Measure No. 15, which was put on the general election ballot by initiative petition, passed. This measure repealed ORS 509.030 and replaced it with ORS 509.031, which explicitly prohibits the purchase and sale within the state of steelhead “by any person fishing commercially.” ORS 509.031 also explicitly states that the intent is not “...to affect Indian fishing rights as granted by federal treaties.”

In response to the enactment of ORS 509.031, the Oregon Fish and Wildlife Commission, in July 1975, adopted a rule that prohibited any wholesale fish dealer, canner, or buyer from selling steelhead in Oregon, except to another wholesale fish dealer, canner, or buyer. This rule was modified in the mid 1990s to allow Treaty Indians to sell or distribute steelhead and walleye taken lawfully during their commercial fishing seasons to individuals or what is commonly referred as the ultimate consumer. However under current administrative rule it remains “unlawful for any wholesale fish dealer, canner, or buyer in possession of legally purchased steelhead trout or walleye from treaty Indians to sell or distribute such fish in Oregon except to another wholesale fish dealer, canner, or buyer.”

In March 2012, representatives of the Oregon Department of Fish and Wildlife (Department) received a request from the Columbia River Treaty tribes to revise the existing rule (OAR 635-006-0225) and allow wholesale fish dealers, cannery or buyers in possession of legally purchased steelhead trout or walleye from treaty Indians to sell or distribute such fish to retail outlets in Oregon. Representatives of the Treaty tribes believe that the current prohibition on retail sales discriminates against the Treaty tribes’ fishery... harms local Oregon businesses and keeps Oregonians from enjoying a local resource caught in Oregon waters.”They also believe that the existing rule is not consistent with the intent of ORS 509.031 to not affect Indian fishing rights as granted by federal treaties.

PUBLIC INVOLVEMENT

The Department has discussed the proposal to modify the existing rule to allow sale of steelhead and walleye in Oregon by wholesale fish dealers, cannery and buyers with representatives from the Association of Northwest Steelheaders, Oregon Anglers, Trout Unlimited, Northwest Sportfishing Industry Association, The Coastal

Conservation Association, ODFW's Warmwater Working Group and Salmon For All.

ISSUE

Revise Oregon Administrative Rule 635-006-0225 to allow wholesale fish dealers, canners or buyers in possession of legally purchased steelhead trout or walleye from treaty Indians to sell or distribute such fish to retail outlets in Oregon.

ANALYSIS

ORS 509.031 was enacted primarily in response to concerns about the incidental harvest of steelhead by non-tribal commercial fisheries in the Columbia River. The intent was to eliminate the incentive to target steelhead by prohibiting their sale or distribution. As such, the statute and subsequent administrative rule focused on steelhead harvested from the Columbia River. However, the statute explicitly states that "nothing in this section is intended to affect Indian fishing rights as granted by federal treaties."

Oregon state law (OAR 635-006-0230) currently allows wholesale fish dealers, canners or buyers in possession of legally purchased steelhead trout from sources outside the Columbia Basin to sell or distribute such fish to retail outlets in Oregon. Steelhead and walleye taken by treaty Indians during Columbia River commercial fishing seasons may also be sold to individuals within Oregon. In addition sales of farm raised steelhead is also allowed in Oregon.

The current prohibition on retail sales by wholesale fish dealers, canners or buyers of steelhead and walleye harvested from the Columbia River by Treaty Indians appears to be an artifact of the focus by the original administrative rule on eliminating the incentive for non-Treaty commercial fishers to incidentally harvest steelhead.

Under the current *US v Oregon* Ten Year Agreement and the NMFS' ESA Biological Opinion impacts on ESA listed steelhead and overall harvest of steelhead are limited by the allowable impacts on B run steelhead. These impact rates range from 13% to 20% depending on the projected run size of B run steelhead for any given year. Given these limitations it appears unlikely that tribal fishers will target or increase their catch of steelhead as a result of the proposed staff recommendation.

OPTIONS

Option 1. Revise Oregon Administrative Rule 635-006-0225 to make it lawful for any wholesale fish dealer, canner, or buyer in possession of legally purchased steelhead trout or walleye from treaty Indians to sell or distribute such fish in Oregon.

Option 2. Take no action to revise Oregon Administrative Rule 635-006-0225.

**STAFF
RECOMMENDATION**

Option 1

DRAFT MOTION

I move to adopt revisions to Oregon Administrative Rule 635-006-0225 that makes it lawful for any wholesale fish dealer, canner, or buyer in possession of legally purchased steelhead trout or walleye from Treaty Indians to sell or distribute such fish in Oregon, as proposed by staff in Attachment 3.

EFFECTIVE DATE