

North of Falcon Policy

Commission Briefing – December 9, 2016



Policy C-3608

Expired December 31, 2016

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Purpose

- Draft Policy
- Public Process and Comments
- Application of Government Transparency Laws to Fisheries Management Negotiations at North of Falcon (Commission request from December)
 - Open Public Meetings Act
 - Case Law on Applicability to North of Falcon
 - Administrative Procedures Act, Public Records
 - Tribal legal systems and processes
 - Efforts to increase transparency
- Commission considers adoption of revised policy

North of Falcon Policy

- Draft revised policy provided at December meeting
 - Most changes to previous policy were organizational or 'housekeeping' changes
 - Incorporated public comment on "In-Season Management" section

- Draft provided today is identical to December draft, with all marked changes incorporated

Public Process and Comments

- Comments on policy heard at November and December meetings
 - In-season management
 - Communication/Transparency of co-manager meetings
- Draft policy posted to web in December
 - Posted online with instructions for commenting via email
 - Advisors informed that policy is up for renewal and draft available during normally scheduled meetings

Public Process and Comments

- Draft policy posted to web in December
 - Majority of comments received focused on transparency of co-manager meetings and lack of public access
 - Other comments directed at:
 - Allocation of catch between tribal, non-tribal commercial and recreational fisheries
 - Keeping gamefish seasons separate from North of Falcon salmon season process
 - Suggestion for modification of language on accessing unutilized portions of treaty allocations – Give priority consideration to allowing some or all of unutilized portions of allocations involving ESA-listed salmonids to go to spawning escapement

North of Falcon Policy - Communications

“The Department shall strive to make ongoing improvements for effective public involvement during the North of Falcon planning process and annual salmon fishery implementation, incorporating the following intents:

- North of Falcon participants will be included as observers during appropriate state/tribal discussions of fishery issues.
- All decisions made during the North of Falcon process will be recorded in writing.
- A variety of tools will be used to effectively communicate with the public, to receive input on pre-season planning or in-season fishery issues, and to make available the record of decisions. Such tools will include: recreational and commercial advisory groups; public workshop to address key issues; the North of Falcon web site; and in-season teleconferences.
- The Department will increase transparency by consulting with stakeholders throughout the pre-season planning process and prior to making major decisions with the co-managers.”

North of Falcon Policy - Communications

- Application of Government Transparency Laws to Fisheries Management Negotiations at North of Falcon (Commission request from December)

Open Public Meetings Act RCW

42.30.010

➤ Legislative declaration

- The legislature finds and declares that all public commissions, boards, councils, committees, subcommittees, departments, divisions, offices, and all other public agencies of this state and subdivisions thereof exist to aid in the conduct of the people's business. It is the intent of this chapter that their actions be taken openly and that their deliberations be conducted openly.
- The people of this state do not yield their sovereignty to the agencies which serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created.

Meetings declared open and public

RCW 42.30.030

- All meetings of the governing body of a public agency shall be open and public and all persons shall be permitted to attend any meeting of the governing body of a public agency, except as otherwise provided in this chapter.

Definitions- Public Agency

RCW 42.30.020(1)

- "Public agency" means:
- (a) Any state board, commission, committee, department, educational institution, or other state agency which is created by or pursuant to statute, other than courts and the legislature;

Definitions – Governing Body

RCW 42.30.020(2)

- "Governing body" means the multimember board, commission, committee, council, or other policy or rule-making body of a public agency, or any committee thereof when the committee acts on behalf of the governing body, conducts hearings, or takes testimony or public comment.
- Governing body means a group not a single person, i.e., individual Director or staff person

Meetings declared open and public

RCW 42.30.030

- All meetings of the *governing body* of a public agency shall be open and public and all persons shall be permitted to attend any meeting of the governing body of a public agency, except as otherwise provided in this chapter.

Other Provisions

- Required notices for meetings
- Minutes, RCW 42.32
- Executive Sessions
- Violations, Penalties
- Note: “Public agency” does not include Treaty Tribes or federal agencies.

Washington Case Law Application

- United States v. Oregon, 699 F. Supp. 1456 (1988).
- Salmon for All v. Dep't of Fisheries, 118 Wn.2d 270, 821 P.2d 1211 (1992).
- Citizens Alliance For Property Rights Legal Fund v. San Juan County, 184 Wn.2d 428, 359 P.3d 753 (2015).

U.S. v. Oregon (1988)

- Challenge to adoption of 1988 Col. River Fish Management Plan – OPMA raised as issue
- Court: No evidence that “governing body” participated – instead representatives/staff
- Meetings of TAC, PAC (Production Adv. Comm) and policy committee were advisory only – each state makes its own decisions.
- No OPMA violation

Salmon For All (1992)

- OPMA challenge to Dir. of Fisheries negotiations w/ Oregon, tribes and U.S. in setting Columbia River fishing seasons.
- Held: OPMA does not apply to single head executive director.
- OPMA does not apply to Columbia Riv. Compact.
- OPMA does not apply to staff negotiations with other entities (Oregon or Treaty Tribes).

CAPR v. San Juan County (2015)

- OPMA challenge to county council (CC)/staff “team” working group meetings, including several CC members.
- Held: Team did not have quorum of CC
- Team was not a “committee” of CC
- Team did not “act on behalf” of CC
- No OPMA violations – team acted as advisory group to county council.

Administrative Procedures Act

RCW 34.05.010(2)

- "Agency" means any state board, commission, department, institution of higher education, or officer, authorized by law to make rules or to conduct adjudicative proceedings, except those in the legislative or judicial branches, the governor, or the attorney general except to the extent otherwise required by law and any local governmental entity that may request the appointment of an administrative law judge under chapter [42.41](#) RCW.

Rule making procedures

Part III, RCW 34.05

- Notices, Washington Register
- Timelines
- Proposed rule
- Written comment opp.; Oral public hearing
- Adopted rule
- Appeal procedures – Part V, RCW 34.05
- Note: “Agency” does not include Treaty Tribes or federal agencies

Public Records Act

RCW 42.56.010(1)

- "Agency" includes all state agencies and all local agencies.
"State agency" includes every state office, department, division, bureau, board, commission, or other state agency.
"Local agency" includes every county, city, town, municipal corporation, quasi-municipal corporation, or special purpose district, or any office, department, division, bureau, board, commission, or agency thereof, or other local public agency.

Public Records Act

RCW 42.56

- Applies to state and local governments
- Requires disclosure of public records
- Public records very broadly defined
- Narrow exemptions, process for describing
- Appeals, penalties
- Note: “Agency” does not include Treaty Tribes or federal agencies

Open Government Page

AGO Website

- <http://www.atg.wa.gov/opengovernment.aspx>
- Training materials
- Resource manuals
- Municipal Research and Services Center – open gov't materials.

Tribal Legal Provisions

- Numerous Treaty Tribes
- Sovereign governments
- Create their own legal systems
- Websites – source of information
- Usually have provisions for adoption of regulations
- Usually allow written or public comments
- Didn't find OPMA or Public Records Acts

North of Falcon Policy - Communications

- Improving transparency – Past efforts
 - Observer attendance at co-manager meetings
 - Extensive public meeting schedule
 - Multiple opportunities and methods for providing comment
 - Commission policy direction to consult with stakeholders “throughout the pre-season planning process and prior to making major decisions with the co-managers”

North of Falcon Policy - Communications

➤ 2016 North of Falcon – Public meeting schedule

Geographic Area	Date(s)	Location
Willapa/Grays	February 24	Montesano
All	March 1	Olympia
Willapa Bay	March 8	Raymond
Grays Harbor	March 9	Montesano
Ocean - PFMC	March 8-14	Sacramento, California
All	March 15	Olympia
Puget Sound	March 17	Sequim
Columbia/Ocean	March 17	Vancouver
Columbia/Ocean	March 21	Olympia
Willapa Bay	March 22	Raymond
Mid-Columbia/Snake	March 22	Clarkston
Columbia	March 23	Kennewick
Grays Harbor	March 24	Montesano
Mid-Columbia/Snake	March 24	Wenatchee
Puget Sound	March 26	Mill Creek
Ocean	March 28	Westport
All	March 30	Lynnwood
Columbia/Ocean	April 6	Olympia
All - PFMC	April 8-14	Vancouver

North of Falcon Policy - Communications

- Public meeting schedule is in addition to:
 - Conference calls and meetings with advisor groups that occur throughout the year
 - Public input accepted by mail, email, phone and online form throughout the process
 - Communication and consultation with stakeholders throughout the process, including frequent updates on progress of co-manager negotiations and positions

- All of this is in addition to rule-making notices, written comment periods and rule-making hearings that are conducted to meet APA requirements

North of Falcon Policy - Communications

- Recommendations for improving transparency
 - Continue efforts to allow some level of public access to co-manager meetings through observer attendance or other methods
 - The department remains open to new ideas for improving communication and transparency

Policy Process

- November 4, 2016 FWC briefing
 - Initial briefing and public comment
- December 2016
 - Briefing on potential revisions to draft policy
 - Additional public comment
 - Commission guidance for revised draft
 - Revised draft posted online for public comment
- January 2017 Commission meeting
 - Commission considers adoption of revised policy

North of Falcon Policy

- Policy C-3608
- Expired December 31, 2016

Questions ?