



Washington Citizen Sportsmen
2116 143rd St Ct. E.
Tacoma, WA 98445
OpenNOF@Gmail.com



Twin Harbors Fish & Wildlife Advocacy
PO Box 179
McCleary, WA 98557
thfwa@comcast.net

December 21,2017

The Honorable Members of the Commission
Washington Fish & Wildlife Commission
600 Capitol Way N.
Olympia, WA 98501-1091

RE: Petition requesting conversion of NOF Policy C-3608 Into a Rule

The Washington Citizen Sportsman group is well known to the Commission through its conversations with the Department staff, presentations to the Commission and it's sponsorship of a petition requesting transparency into the NOF process that was signed by thousands of citizens statewide. The Twin Harbors Fish & Wildlife Advocacy is a 501(c) (3) nonprofit WA corporation based in McCleary, WA (THFWA.ORG) also known to the Commission that has promoted transparency in the NOF process.

Throughout the efforts on transparency, Commission members have repeatedly voiced their support for increased transparency in the NOF process. The NOF Policy (C-3608) passed by the Commission contains the following provision:

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:

- o North of Falcon participants will be included as observers during appropriate state/tribal discussions of fishery issues.
- o All decisions made during the North of Falcon process will be recorded in writing.
- o 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 workshops to address key issues; the WDFW North of Falcon Web site; and in-season tele-conferences.

- o 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.

Considering the public outcry following the recent announcement in Puget Sound, it seems clear the Department does not adequately consider the wishes of the Commission. As an example, the Advocacy filed a public document request (PDR 16482) in October 23, 2016 to view how the Department conducted its business for the 2016 season setting in hopes of determining the effect of the Commission Policy on the Departments actions. The PDR requested the following:

Any internal WDFW policy or guidance and any understanding(s) between WDFW and a tribal Co-Managers(s) that were used or followed in the HCMP proceedings related to:

- a. the location of Co-Management meetings;
- b. record keeping of Co-Management meetings;
- c. notification to the public of Co-Management meeting locations and times;
- d. tribal or non-tribal citizens having the ability to attend and observe HCMP meetings in progress; and
- e. a fishing season agreement(s) reached between Co-Managers will be adopted as a rule (WAC) by WDFW in the NOF proceedings.

Over a year later, the Advocacy continues to be sent records from the 2016 process. At this point, we have received 6.28 GB of files totaling 4,645 individual records. Our review of those files finds little if any reference whatsoever to the transparency items shown above leaving one to wonder if the NOF Policy C-3608 passed by the Commission resulted in any impact on the process. Simply put, we cannot find any documented effort by the Department to provide transparency over the co-management process.

Our two groups believe it is time for the Commission to insert itself in a clear and precise fashion that would hopefully result in the appropriate level of consideration by the Department. More of the same will simply result in more of the same.

In looking for a path forward for the citizens and the members of the Commission, we turned to the laws governing adoption of policies and believe it lays out appropriate actions steps.

RCW 34.05.230

Interpretive and policy statements.

(1) An agency is encouraged to advise the public of its current opinions, approaches, and likely courses of action by means of interpretive or policy statements. Current interpretive and policy statements are advisory only. To better inform and involve the public, an agency is encouraged to convert long-standing interpretive and policy statements into rules. (Emphasis Added)

(2) A person may petition an agency requesting the conversion of interpretive and policy statements into rules. Upon submission, the agency shall notify the joint administrative rules review committee of the petition. Within sixty days after submission of a petition, the agency shall either deny the petition in writing, stating its reasons for the denial, or initiate rule-making proceedings in accordance with this chapter.

In filing our petition, we recognized the process for converting a policy into a rule as contained in the Administrative Procedures Act (APA). If our petition is granted, the Commission would file a CR 101 announcing the issue is under consideration. After input from stakeholders, a CR 102 would be filed. Public input on the proposal would follow. The final step would be for the Commission to decide to whether or not adoption as a rule is appropriate.

Why take this action? We believe the problem we face today is rooted in the statute with “*Current interpretive and policy statements are advisory only...*” We believe the Commission needs to give its subordinates (Dept.) clearer instructions. The statute recognized the potential for the problems we face today by adding the language “*To better inform and involve the public, an agency is encouraged to convert long-standing interpretive and policy statements into rules.*” (The “agency” in this case is the Commission, not the Department¹)

At this point in time, our organizations are not providing any specific language changes between the current policy and an adopted rule. Rather, we are simply requesting the Commission grant our petition and file a CR 101 so the process can begin with a goal of finding a solution to the transparency problems that plague NOF and undermine the public’s confidence in WDFW. If a solution can be found, it would still remain in the discretion of the Commission as to whether or not it would leave it as it currently is, amend the current policy, or adopt a revised version as a rule. We further point out that passage into a rule would not prevent changes in the future on a regular basis just as happens each year with the season rules and often regularly with interpretive policy statements.

Respectfully,



Perry Menchaca
Washington Citizen Sportsmen



Tim Hamilton
Twin Harbors Fish & Wildlife Advocacy

Cc: Director Jim Unsworth, via email
Ron Warren, WDFW Fish Program, via email
Mike Grossman, ATG, Department, via email
Bill Frymire, (ATG), Commission, via email
Interested Party Contact Lists, via email

¹ (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.....(RCW 34.05.010)