




State of Washington
Fish & Wildlife Commission

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DATE: November 2, 2018

TO: Kelly Susewind, Director
Washington Department of Fish and Wildlife

FROM: Brad Smith, Chair 
Washington Fish and Wildlife Commission

SUBJECT: GENERAL DELEGATION OF AUTHORITY

The Fish and Wildlife Commission approved this Delegation of Authority in open session at the Commission's November 2, 2018 meeting.

The Fish and Wildlife Commission has broad statutory powers to govern the Department of Fish and Wildlife as provided under RCW 43.300 and Title 77 RCW. RCWs 43.300.040 and 77.04.020 authorize the Commission to delegate to the Director any powers or duties vested in the Commission. In order to assure the smooth and efficient transaction of Department business under Commission authority, the Commission has determined that it is appropriate to delegate certain Commission authorities and duties to the Director. Any power or duty exercised by the Director pursuant to this Delegation of Authority shall be exercised consistent with relevant Commission policies, including any policy-specific delegations by the Commission. This delegation supersedes and repeals the Commission's delegation of authority dated August 5, 2017.

For purpose of this document, "Commission" means the Fish and Wildlife Commission; "Director" means the Director of Fish and Wildlife; and "Department" means the Fish and Wildlife Commission, the Director, and all employees.

The Commission delegates the following powers and duties vested in the Commission by statute to the Director of the Department of Fish and Wildlife. This general delegation is subject to modification and repeal at any time. In the event of any conflict between this general delegation and any subsequent policy-specific delegation by the Commission, the policy-specific delegation will control.

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A. RULEMAKING AUTHORITY

1. General

The Director shall have the authority to adopt emergency rules in situations as defined in RCW 34.05.350. In addition, the Director shall have the authority to adopt expedited rules in situations as defined in RCW 34.05.353.

2. Specific

The Director shall have the authority to adopt harvest rules for clam and oysters to support and facilitate State/Tribal Harvest Management Plans with Treaty Tribes under U.S. v. Washington.

The Director may act on the Commission's behalf in the certification of rules pursuant to RCW 77.04.130.

B. AUTHORITY TO ISSUE AND REVOKE LICENSES AND PERMITS

The Director is delegated authority to issue and revoke permits that the Commission is authorized to issue pursuant to Title 77 RCW, including but not limited to permits authorized by RCWs 77.12.047, 77.15.250, 77.15.253, and RCW 77.32.237.

The Director is authorized to make decisions on hunting and fishing license suspensions, revocations and denials under RCW 77.15, including but not limited to decisions to revoke and reinstate license privileges under RCW 77.15.710.

C. ADMINISTRATIVE HEARINGS

The Director may conduct administrative hearings as required by law or as otherwise appropriate to the exercise of the Director's authority under Title 77 RCW or under this Delegation of Authority, including but not limited to decisions on hunting and fishing license suspensions, revocations and denials under RCW 77.15, decisions on forfeiture of property under RCWs 77.15.070 and 77.15.085, damage claims under RCW 77.36, commercial license renewals under RCW 77.15.030, and trapping licenses under RCW 77.15.194.

D. INTER-JURISDICTIONAL COMPACTS/COUNCILS

1. Magnuson Fishery Conservation and Management Act

Pursuant to 16 U.S.C. § 1862, the Director is the "principal State official with marine fishery management responsibility and expertise" in Washington, and represents the State of Washington on the North Pacific Fishery Management Council (NPFMC) and Pacific Fishery Management Council (PFMC). The Director shall have the authority to adopt rules pertaining to harvest of fish and wildlife in the federal Exclusive Economic Zone

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(EEZ) by vessels or individuals registered or licensed under the laws of the state, and consistent with RCWs 77.12.045 and 77.12.047.

2. Interstate Compacts

The Director represents the State of Washington on the Columbia River Compact as provided in RCWs 77.75.010 and 77.75.020, and shall consult with the Fish and Wildlife Commission on decisions that may have significant implications for the Department.

The Director shall represent the State of Washington on the Pacific States Marine Fisheries Commission as provided in the Pacific States Marine Fisheries Compact under RCWs 77.75.030 and 77.75.040, and shall consult with the Fish and Wildlife Commission on decisions that may have significant implications for the Department.

3. United States and Canada Treaty Concerning Pacific Salmon

The Director shall consult with the Fish and Wildlife Commission in representing the State of Washington in Pacific Salmon Commission management forums. For sockeye and pink salmon in Puget Sound, the Director shall have the authority to authorize commercial fishing by rule, and determine the kind of gear that may be fished as authorized in RCWs 77.12.045, 77.50.010 and 77.75.140, consistent with federal regulations implementing recommendations of the Fraser River Panel.

4. International Pacific Halibut Commission

The Director or his designee shall have the authority to represent the Department at proceedings of the International Pacific Halibut Commission, and shall consult with the Fish and Wildlife Commission on issues that may have significant implications for the Department.

E. AGREEMENTS

Except as otherwise provided for in this Delegation of Authority or in any policy-specific delegation by the Commission, the Commission reserves final approval authority for tribal, interstate, international, and any other department agreements relating to fish and wildlife, pursuant to RCW 77.04.055.

1. Agreements with the United States

The Director shall have the authority to make agreements with the United States to protect Columbia River fish as defined in RCW 77.12.285.

The Director may negotiate agreements with the United States Department of Defense to coordinate fishing in state waters as detailed in RCW 77.12.275.

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The Director may enter into agreements with the United States for the construction, maintenance, and operation of fish cultural stations, laboratories, and devices under RCW 77.12.285.

2. Treaty Indian Tribal Agreements

The Director shall have the authority to enter into co-management agreements with recognized treaty or executive order Indian tribes, including any such agreements required under *U.S. v. Washington* (e.g. the Puget Sound Chinook Management Plan), and *U.S. v. Oregon*. The Director shall consult with the Commission on decisions that may have significant implications for the Department. The Director shall annually report to the Commission on issues associated with co-management agreements.

3. Interlocal Cooperation Act Agreements

The Director shall have the authority to enter into Interlocal Cooperation Act agreements with other public agencies, pursuant to RCW 39.34, in order to facilitate the efficient operation of the Department.

4. Other Agreements

The Director is authorized to enter into other contracts and agreements on behalf of the Department. The Director is delegated authority to enter into contracts and agreements as necessary in order to carry out Commission policy, and as necessary or appropriate to carry out any authority herein delegated to the Director. Except as otherwise provided for in this Delegation of Authority, the Director shall have the authority, in consultation with the Commission, to enter into other agreements on behalf of the Commission.

F. ACCEPTANCE OF COMPENSATION, GIFTS AND GRANTS

The Director shall have the authority to receive funds from the United States for construction, maintenance and operation of fish cultural stations, laboratories, and devices under RCW 77.12.285.

The Director may acquire the use of lands where construction or improvement is to be carried on by the United States per RCW 77.12.285.

G. REPORTS TO THE LEGISLATURE

The Director shall submit required reports as provided in RCW 77.04.150 concerning the effectiveness of the disabled hunter and fisher advisory committee.

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H. REAL AND PERSONAL PROPERTY

Acquisition of property is delegated or retained as follows. The Director may acquire rights in property that are less than a fee simple estate such as water rights, easements, leases, or licenses, in land or structures and construct and maintain necessary facilities thereon. Acquisition of fee simple estates and conservation easements must be approved by the Commission.

Conveyance (disposal) of Department personal or real property or property interests are delegated or retained as follows. Conveyance of the fee simple estate must be approved by the Commission. The Director is delegated authority to issue, renew, and amend covenants, leases, concessions, easements, licenses, issue crop share agreements, sell agricultural commodities, and execute land use agreements deemed appropriate under local land use requirements, provided that they do not exceed twenty years in duration (including renewal terms). Any such property interest exceeding twenty years, including renewals thereof, must be approved by the Commission. The Director is delegated the authority to convey the following: perpetual easements for utility service to department facilities; and, funders' liens in the form of deeds of right, notices of federal participation, covenants, and conservation easements.

The Director may approve timber sales less than or equal to 1,000,000 board feet for areas not under an approved management plan, pursuant to RCW 77.12.210, including where there is a need to salvage timber affected by fire, disease, or other disaster-related conditions. Where there is an approved management plan, the Director may also approve timber sales not to exceed 1,000,000 board feet. The Director may grant permits for the removal from Department lands of downed timber for firewood. The Director may grant permits for the collection from Department lands of naturally shed antlers of deer, elk, and moose. Except as otherwise provided for herein, the Director may authorize the disposition of personal property owned by the Department.

I. SPECIAL PROJECTS, PROPOSALS, POLICIES AND PLANS

The Director shall provide for the operation and support of Regional Fisheries Enhancement Groups and exercise all authority provided in RCWs 77.95.090-.110.

J. COLLECTION AND EXPENDITURES OF FUNDS

The Director shall have the authority to use money received under RCW 77.12.177 as an unanticipated receipt.

K. ACQUISITION, REMOVAL, DISPOSITION, OR SALE OF FISH AND WILDLIFE

The Director may specify by rule the statistical and biological reports required by fishers, dealers, boathouses or processors of wildlife, fish or shellfish under RCW 77.12.047.

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The Director may prohibit the introduction, transportation, or transplanting of fish, shellfish, organisms, material, or other equipment which, in the Director's judgment, may transmit any disease or pests affecting food fish or shellfish under RCW 77.12.455.

The Director shall have the authority to determine the number of triploid trout are produced and which waters of the state are appropriate for their stocking under RCW 77.18.060.

L. LITIGATION

The Director may request the Attorney General to initiate litigation that relates to any power or duty of the Director or the Department, or any power or duty delegated by the Commission to the Director. The Director, in consultation with the Commission, may request the Attorney General to initiate litigation on behalf of the Commission.

The Director may request the Attorney General to prosecute criminal violations of RCW Title 77 and Department rules, pursuant to RCW 77.15.065.

The Director may negotiate and approve settlements of litigation and potential litigation, except as conditioned herein. The Director shall advise the Commission of any settlement approved by the Director valued at more than \$50,000. The Director shall consult with the Commission prior to entering into any settlement agreement that includes commitments relating to the exercise of Commission authority not delegated to the Director.

M. STATE LEGISLATIVE AUTHORITY

The Commission retains authority to approve agency-request operating and capital budget proposals submitted to the Governor. In addition, the Commission retains authority to approve agency-request legislation submitted to the Governor.

Given the high volume of bills introduced and the rapid pace of the legislative session, the Director is authorized to develop policy and fiscal analyses for legislation relevant to the Department's role and responsibilities and to testify on legislative matters in a manner that is consistent with Commission policies. The Director shall have the authority to communicate recommendations or concerns regarding legislation with legislative offices and the Governor. The Director may consult with the Commission on decisions that may have significant implications for the Department. The Director shall report to the Commission frequently during session and provide an end-of-session summary on the outcome of each legislative session as it pertains to the Department.

Federal Legislative Authority

The Director is authorized to establish positions on federal legislation, federal funding proposals, proposed rule changes by federal agencies, and executive orders issued by the

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administration that could impact the Department's roles and responsibilities in a manner that is consistent with Commission policies. The Director is authorized to generate policy and fiscal analyses, and communicate areas of support or concern to congressional offices and federal agencies. The Director shall inform the Commission of major Congressional issues and may consult with the Commission on decisions that may have significant implications for the Department. The Director shall provide an annual summary to the Commission on status of Congressional issues as it pertains to the Department.

N. MISCELLANEOUS

All other duties of the Director and the Commission as described in Title 77 RCW remain in effect and, wherever the word Department is used, the Director is authorized to act. Additionally, the Director is authorized to delegate to employees of the Department any power or duty delegated to the Director by the Commission, unless the Commission expressly directs that the power or duty be exercised by the Director only.

cc: Fish and Wildlife Commission
Joe Shorin, Senior Assistant Attorney General

