

Dear Senators BAIR, VICK, Stennett, and
Representatives RAYBOULD, Gestrin, Pence:

The Legislative Services Office, Research and Legislation, has received the enclosed rules of the
Department of Fish and Game:

IDAPA 13.01.11 - Rules Governing Fish - Proposed Rule (Docket No. 13-0111-1501);

IDAPA 13.01.11 - Rules Governing Fish - Temporary and Proposed Rule (Docket No. 13-0111-1502).

Pursuant to Section 67-454, Idaho Code, a meeting on the enclosed rules may be called by the
cochairmen or by two (2) or more members of the subcommittee giving oral or written notice to Research
and Legislation no later than fourteen (14) days after receipt of the rules' analysis from Legislative
Services. The final date to call a meeting on the enclosed rules is no later than 10/26/2015. If a meeting is
called, the subcommittee must hold the meeting within forty-two (42) days of receipt of the rules' analysis
from Legislative Services. The final date to hold a meeting on the enclosed rules is 11/24/2015.

The germane joint subcommittee may request a statement of economic impact with respect to a
proposed rule by notifying Research and Legislation. There is no time limit on requesting this statement,
and it may be requested whether or not a meeting on the proposed rule is called or after a meeting has
been held.

To notify Research and Legislation, call 334-4834, or send a written request to the address on the
memorandum attached below.



Eric Milstead
Director

Legislative Services Office

Idaho State Legislature

Serving Idaho's Citizen Legislature

MEMORANDUM

TO: Rules Review Subcommittee of the Senate Resources & Environment Committee and the House Resources & Conservation Committee

FROM: Principal Legislative Research Analyst - Katharine Gerrity

DATE: October 06, 2015

SUBJECT: Department of Fish and Game

IDAPA 13.01.11 - Rules Governing Fish - Proposed Rule (Docket No. 13-0111-1501)

IDAPA 13.01.11 - Rules Governing Fish - Temporary and Proposed Rule (Docket No. 13-0111-1502)

1. IDAPA 13.01.11 - Rules Governing Fish

The Department of Fish and Game submits notice of proposed rule at IDAPA 13.01.11 - Rules Governing Fish. According to the department, the purpose of the rule is to establish specific conditions to allow the removal of the heads and tails of trout, bass and tiger muskie for transit or while in the field.

Negotiated rulemaking was conducted. The rulemaking appears to be authorized pursuant to Sections 36-104 and 36-901, Idaho Code.

2. IDAPA 13.01.11 - Rules Governing Fish

The Department of Fish and Game submits notice of temporary and proposed rule at IDAPA 13.01.11 - Rules Governing Fish. According to the department, the forecasted return of Coho salmon is sufficient to allow Coho salmon fishing seasons and harvest for only the second time in more than 30 years. The department states that most returning Coho are not adipose fin-clipped, so the rule is being amended to allow the take and possession of Coho with intact adipose fins in the Clearwater drainage. The department notes that the rules are also being updated and obsolete language is being removed.

The department indicates that the temporary rule is appropriate in that the rulemaking confers a benefit. The temporary rule was effective on August 28, 2015. The department notes that negotiated rulemaking was not conducted because of the need for a temporary rule to provide harvest opportunity this year. The rulemaking appears to be authorized pursuant to Sections 36-104 and 36-901, Idaho Code.

cc: Department of Fish and Game
Dallas Burkhalter

Mike Nugent, Manager
Research & Legislation

Cathy Holland-Smith, Manager
Budget & Policy Analysis

April Renfro, Manager
Legislative Audits

Glenn Harris, Manager
Information Technology

IDAPA 13 - IDAHO DEPARTMENT OF FISH AND GAME

13.01.11 - RULES GOVERNING FISH

DOCKET NO. 13-0111-1501

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 36-104(b) and 36-901, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 21, 2015.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

This rule establishes specific conditions to allow the removal of the heads and tails of trout, bass, and tiger muskie for transit or while in the field.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: None.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: NA

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the July 1, 2015 Idaho Administrative Bulletin, [Vol. 15-7, page 38](#).

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule:

Not applicable.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Dave Parrish (208) 287-2773.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 28, 2015.

DATED this 3rd Day of September, 2015.

W. Dallas Burkhalter
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THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 13-0111-1501
(Only Those Sections With Amendments Are Shown.)

104. IDENTIFICATION OF SPECIES AND SIZE IN POSSESSION AND DURING
TRANSPORTATION OR SHIPMENT.

01. **Length.** The length of a fish shall be determined by measuring the distance between the tip of the nose and the tip of the tail fin. (3-20-97)

02. **Restrictions.** No person shall have in the field or in transit any trout, tiger muskie, or bass from which the head or tail has been removed: unless: (~~3-20-97~~)()

a. The angler is ashore and done fishing for the day; ()

b. The fish is processed or packaged with the skin naturally attached to the flesh; ()

c. The fish must be processed or packaged in a manner that the number of fish harvested can be readily determined; and ()

d. Processed trout, bass, and tiger muskie cannot be transported by boat. ()

03. **Possession Limit.** Any processed trout, bass, or tiger muskie count towards an angler's possession limit while in the field of in transit. ()

IDAPA 13 - IDAHO DEPARTMENT OF FISH AND GAME

13.01.11 - RULES GOVERNING FISH

DOCKET NO. 13-0111-1502

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is August 28, 2015.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Sections 36-104(b) and 36-901, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 21, 2015.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

The forecasted return of Coho salmon is sufficient to allow Coho salmon fishing seasons and harvest. This would be only the second such opportunity in more than 30 years. Most returning Coho salmon are not adipose fin-clipped, so the rule needs to be amended to allow take and possession of Coho salmon with an intact adipose fin in the Clearwater drainage. Additionally, the rules are updated and obsolete language removed before the printing of the next triennial seasons brochure.

TEMPORARY RULE JUSTIFICATION: Pursuant to Section 67-5226(1) (c), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons:

Conferring a benefit.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased:

Not Applicable.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year:

Not applicable.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because of the need for a temporary rule to be implemented this year to provide harvest opportunity for Coho salmon, and the need to update and remove obsolete language before printing the next triennial seasons brochure.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule:

Not applicable.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Dave Parrish (208) 287-2773.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 28, 2015.

DATED this 3rd Day of September, 2015.

W. Dallas Burkhalter
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**THE FOLLOWING IS THE TEMPORARY RULE AND THE PROPOSED TEXT
OF DOCKET NO. 13-0111-1502
(Only Those Sections With Amendments Are Shown.)**

004. DEFINITIONS.

For the purposes of this chapter, the following terms will be defined as follows: (3-20-97)

01. Artificial Fly. Any fly made entirely of rubber, wood, metal, glass, feather, fiber, or plastic by the method known as fly tying. (3-20-97)

02. Artificial Lure. Any device made entirely of rubber, wood, metal, glass, feather, fiber, or plastic with hook or hooks attached. (3-29-12)

03. Bag Limit. The maximum number of fish that may be lawfully taken by any one (1) person in one (1) day. The term "bag limit" shall be construed to be an individual, independent effort and shall not be interpreted in any manner as to allow one (1) individual to take more than his "bag limit" toward filling the "bag limit" of another. ~~The bag and possession limits are equal except for salmon and steelhead.~~ (3-20-97)(8-28-15)T

04. Bait. Organic substances, other than rubber, wood, feather, fiber, or plastic, attached to a hook to attract fish. Bait includes insects, insect larvae, worms, dead fish, fish parts, any other animal or vegetable matter, or scented synthetic materials. (Live fish prohibited.) (3-29-12)

05. Barbless Hook. A fish hook without barbs or on which barbs have been bent completely closed. (3-20-97)

06. Catch-and-Release. Effort, by permitted methods, to catch or attempt to catch a fish or species of fish is lawful, with the restriction that any fish so caught must be released immediately, unharmed, back to the water. NOTE: Species of fish not specifically listed as catch-and-release may be harvested under their appropriate limits. (3-30-07)

07. Confluence of a Stream or River. The point where two (2) rivers or streams come together. (3-20-97)

08. Diversion. A man-made structure designed to change the direction of flowing water in a stream. (3-29-12)

09. Diversion Pond. A man-made pond holding water taken from a stream or reservoir. The diversion pond may be connected to the stream or reservoir by an open ditch or pipe. (3-29-12)

- 10. Drainage.** All water flowing into a common river or stream system, either above or below ground, due to area geography. (3-29-12)
- 11. Electric Motors Only.** When fishing waters listed “electric motors only,” gas (internal combustion) motors may be attached to the boat; but use of the gas motor is prohibited. (3-20-97)
- 12. Fishing.** Any effort made to take, kill, injure, capture, or catch any fish, crayfish, or bullfrog. (3-20-97)
- 13. Fish Trap.** Any man-made structure designed to capture fish. (3-29-12)
- 14. Fish Weir.** Any man-made structure placed in a water body to delay or divert migrating fish. (3-29-12)
- 15. Flat Water.** Water where there is no observable direction of flow. (3-29-12)
- 16. Float Tube.** A floating device that suspends a single occupant, from the seat down, in the water, and is not propelled by oars, paddles, or motors. (4-6-05)
- 17. Fly Fishing.** Fishing with a fly rod, fly reel, fly line, and artificial fly. (3-20-97)
- 18. Game Fish.** Brook, brown, bull (Dolly Varden), cutthroat, golden, lake (Mackinaw), rainbow (including steelhead), splake and sunapee trout; trout hybrids; Chinook, coho, Atlantic and kokanee (blueback) salmon; grayling; whitefish; cisco; crappie; perch; bass; catfish; bullheads; sunfish; sturgeon; northern pike; tiger muskie; walleye and sauger; and burbot (ling). Bullfrogs and crayfish are also defined as game fish. (4-6-05)
- 19. General Rules.** The seasons, gear, and bag limits adopted for the Department Region where you are fishing. (3-29-12)
- 20. Harvest.** Reduce a fish to possession. (3-20-97)
- 21. Hook.** A bent wire device, for the catching of fish, to which one (1), two (2), or three (3) points may be attached to a single shank. Up to five (5) hooks per line may be used, except where specifically prohibited. (3-20-97)
- 22. Hybrid Fish.** The offspring of two (2) different species or subspecies of fish. (3-29-12)
- 23. Ice Fishing.** Fishing through an opening broken or cut through the ice. (3-20-97)
- 24. Length.** The length between the tip of the nose or jaw and the tip of the tail fin. (3-20-97)
- 25. Limit is 0 (Zero).** Fishing is allowed but the species listed in the rule or proclamation must be released after landing and may not be reduced to possession. (3-29-12)
- 26. Motor.** Includes electric and internal combustion motors. (See Subsection 004.09 - Electric Motors Only.) (3-20-97)
- 27. Mouth of River or Stream.** The place where a river or stream enters a larger body of water. (3-20-97)
- 28. No Motors.** Fishing from a boat with a motor attached is prohibited. (3-20-97)
- 29. Possession Limit.** Maximum number of fish that may be lawfully in possession of any person. “Possession limit” shall apply to fish while in the field or being transported to the final place of consumption or storage. (3-20-97)
- 30. Reservoir.** The flat water level existing at any time within a reservoir basin. Unless noted

- otherwise, a stream flowing through the drawdown portion of a reservoir is not considered part of the reservoir. (3-20-97)
31. **Season Limit.** The maximum number of fish that may be lawfully taken in any declared season. (3-20-97)
32. **Section.** An area of a river, stream, or reservoir between specific boundary locations. (3-29-12)
33. **Single-Point Hook.** A bent wire device, for catching fish, with one (1) shank and one (1) point. (3-20-14)
34. **Sliding Sinker.** A method of attaching a sinker to a device that slides freely on the main line. The line used to attach the sinker to the sliding device must be of lower breaking strength than the main line. (3-2-10)
35. **Snagging.** Taking or attempting to take a fish by use of a hook or lure in any manner or method other than enticing or attracting a fish to strike with, and become hooked in, its mouth or jaw. Game fish which are hooked other than in the jaw or mouth must be released immediately. (4-6-05)
36. **Special Rule Waters.** Any water with a gear, season, or bag limit rule that is different from the regional general rules. (3-29-12)
37. **Steelhead.** Steelhead are defined as any rainbow trout longer than twenty (20) inches in rivers and streams in the Snake River drainage below Hells Canyon Dam, the Salmon River drainage, and the Clearwater River drainage (excluding that portion above Dworshak Dam). Rainbow trout longer than twenty (20) inches in length with the adipose fin clipped (as evidenced by a healed scar) are defined as steelhead in the Snake River from Hells Canyon Dam upstream to Oxbow Dam, and in the Boise River from its mouth upstream to Barber Dam. (3-29-12)
38. **Tributary.** A stream flowing into a larger stream or lake. (3-20-97)
39. **Trout.** Includes the following trout family fishes: brown, cutthroat, golden, grayling, lake (Mackinaw), rainbow, splake, Sunapee; trout hybrids; and the landlocked forms of Chinook, coho, Atlantic and kokanee (blueback) salmon. (3-30-07)
40. **Unattended Line.** A line not under the immediate surveillance by the angler. (3-20-97)
41. **Unprotected Nongame Fish.** All fish species other than game fish and protected nongame fish. (3-30-07)
42. **Upstream.** Moving from a lower elevation towards a higher elevation point in the same stream. (3-29-12)
43. **Watercraft.** Those devices designed as a means of transportation on water. (3-20-14)

(BREAK IN CONTINUITY OF SECTIONS)

202. BAG AND POSSESSION LIMITS.

01. **Bag Limit.** Maximum number of fish that may be lawfully taken by one (1) person in one (1) day. *The bag and possession limits are equal, except where listed in region exceptions and for salmon and steelhead.* ~~(3-20-97)~~ (8-28-15)T
02. **Possession Limit.** Maximum number of fish that may be lawfully in possession of any one (1) person. Possession limit shall apply to fish while in the field or being transported. All fish that are hooked, landed and not immediately released shall be counted in the possession limit of the person hooking the fish. (3-20-97)

03. Transport or Gift. No person shall transport for another or accept as a gift any game fish unless a statement signed by taker accompanies the fish, showing the number and kinds, the date taken, the taker's name, address, and fishing license number. However, no person may claim ownership of more fish than allowed by the possession limit. (7-1-99)

04. Table on Bag and Possession Limits for Specified Fish. Pursuant to Section 36-105(3), Idaho Code, the Commission now sets the seasons and regional exceptions by proclamation, which includes regional bag and possession limits for specified fish. The proclamation is published in a brochure available at Department offices and through license vendors. (3-2-10)

05. Special Limits. No person shall fish in any waters while having fish in possession in excess of the limits for those waters. (7-1-99)

(BREAK IN CONTINUITY OF SECTIONS)

403. PERMIT VALIDATION.

When a steelhead trout has been hooked, landed, and reduced to possession, the angler hooking the fish must immediately do the following: (3-20-97)

01. Permit. Completely remove one (1) numbered notch from the permit. (3-20-97)

02. Number Code. Look up the number code from the location code list and write it in the space provided.

RIVER LOCATION CODES	
SNAKE RIVER	
Snake River, downstream from Salmon River	01
Snake River, from Salmon River to Hells Canyon Dam	02
Snake River, Hells Canyon Dam to Oxbow Dam	27
CLEARWATER RIVER	
Clearwater River, downstream from Orofino Bridge	03
Clearwater River, upstream from Orofino Bridge	04
North Fork Clearwater River	05
<u>Middle Fork Clearwater River</u>	<u>06</u>
South Fork Clearwater River	07
<u>Lochsa River</u>	<u>08</u>
SALMON RIVER	
Salmon River, downstream from Whitebird Creek	10
Salmon River, Whitebird Creek to Little Salmon	11
Salmon River, Little Salmon to Vinegar Creek	12
Salmon River, Vinegar Creek to South Fork	13
Salmon River, South Fork to Middle Fork	14
Salmon River, Middle Fork to North Fork	15

RIVER LOCATION CODES	
Salmon River, North Fork to Lemhi River	16
Salmon River, Lemhi River to Pahsimeroi River	17
Salmon River, Pahsimeroi River to East Fork	18
Salmon River, upstream from the East Fork	19
OTHER	
Little Salmon River	20
<u>South Fork Salmon River</u>	<u>21</u>
Panther Creek	24
Boise River	28

~~(3-2-10)~~(8-28-15)T

- 03. Date Entry.** Enter the month and day the fish was caught. (4-6-05)

(BREAK IN CONTINUITY OF SECTIONS)

504. IDENTIFICATION OF SPECIES IN POSSESSION AND DURING TRANSPORTATION OR SHIPMENT.

01. Provisions for Processing and Transporting Salmon. No person shall have in the field or in transit hatchery-produced adult anadromous salmon that has been processed by removing the head and tail unless the following conditions are met: (3-29-12)

- a.** The fish has been recorded on the taker's salmon permit; (3-29-12)
- b.** The fish is processed and packaged with the skin naturally attached to the flesh including a portion with a healed, clipped, adipose fin scar or the adipose fin; and ~~(3-29-12)~~(8-28-15)T
- c.** The fish must be packaged in a manner that the number of fish harvested can be readily determined. (3-29-12)

02. Restrictions on Processing and Transporting Salmon. No person shall process salmon until they are ashore and done fishing for the day. No person shall transport processed salmon via boat. Jack salmon may not be processed while in the field or in transit. Any processed salmon count towards an angler's possession limit while in the field or in transit. (3-29-12)

505. SALMON SPECIAL RESTRICTIONS.

01. Method of Take. It is unlawful to use any hook larger than five-eighths (5/8) inch measured from the point of the hook to the shank. Salmon may be taken only with barbless hooks in the Salmon, Clearwater, and Snake River drainages. Bending the barb down to the shank of a single, double, or treble hook will meet this requirement. Salmon may be taken with barbed hooks in the Boise River drainages, and the Snake River between Hells Canyon and Oxbow Dams. (3-2-10)

02. Snagging. No person shall kill or retain in possession any salmon which has been hooked other than in the mouth or jaw. Any salmon hooked other than in the mouth or jaw must be immediately released unharmed. (4-6-05)

03. Legal Catch. Any salmon caught in a legal manner must be either released or killed immediately after it is landed. (4-6-05)

04. Cease Fishing. Once an angler has attained his bag, possession, or season limit on those waters with salmon limits, he must cease fishing for salmon. (3-20-97)

05. No Harvest or Closed to Harvest. Effort, by permitted methods, to catch or attempt to catch a salmon is lawful with the restriction that any salmon so caught must be released immediately, unharmed, back to the water. (4-6-05)

06. Keeping Marked Fish. Prior to September 1 each year, only salmon which have been marked by clipping the adipose fin, as evidenced by a HEALED scar may be kept in the Salmon, Clearwater, and Snake River drainages. Beginning September 1 each year, anglers may retain salmon with an intact adipose fin as set by Commission season proclamation. ~~(4-6-05)~~(8-25-15)T

07. Fish Counted in Limit. All fish that are hooked, landed, and not immediately released shall be counted in the limits of the person hooking the fish. (4-6-05)

08. Special Limits. No person shall fish in waters having special limits while possessing fish of those species in excess of the special limits. (4-6-05)