

May 4, 2004

Pete Granger
Program Leader for Marine Advisory Services
Washington Sea Grant Program
University of Washington, Box 355060
3716 Brooklyn Ave NE
Seattle, WA 98105-6795

Dear Pete,

Below is the summary of research of the Sea Grant Law Center regarding the question you posed to us about whether there are any legal barriers which would prevent commercial fishermen from taking tourists out on their boats. The following information is intended as advisory research only and does not constitute legal representation of Washington Sea Grant by the National Sea Grant Law Center. It represents our interpretation of the relevant laws and cases.

If I understand the scenario correctly, some commercial fishermen may be interested in supplementing their income by offering to take tourists out fishing. The tourists would be paying for the right to "live the life" of a commercial fishermen for a day; helping to set and haul in the nets and process the catch. The concept is very similar to "dude ranching."

Unfortunately, § 77.15.590 of the Washington Revised Code may pose a problem to commercial fishermen wishing to pursue this alternative income stream. Section 77.15.590 states:

- (1) A person is guilty of unlawful use of a commercial fishing vessel, except as may be authorized by rule of the commission, for recreational or charter fishing if the person uses, or controls a vessel on the same day for both:
 - (a) Charter or recreational fishing; and
 - (b) Commercial fishing or shellfish harvesting.
- (2) Unlawful use of a commercial fishing vessel for recreational or charter fishing is a gross misdemeanor.

"Dude fishing" could be viewed as charter fishing. A "charter boat" is defined as "a vessel from which persons may, for a fee, fish for food fish or shellfish for personal use, and that brings food fish or shellfish into state ports or brings food fish or shellfish taken from state waters into United States ports." (Wash. Rev. Code § 77.65.150(4) (2004)). If the commercial fishermen are charging a fee to take people out to fish for food fish or shellfish for personal use, the vessel is a charter boat. A person cannot operate his/her vessel as a charter boat and a commercial fishing boat on the same day. On its face, therefore, the law seems to prohibit dude fishing.

The key question is whether the "dude fishermen" are on the commercial vessel to fish for commercial purposes or personal use. "Personal use" means for the private use of the individual taking the fish or shellfish and not for sale or barter." (Wash. Rev. Code § 77.08.010(43) (2004)). If the tourist receives a portion of the catch at the end of the day, I believe § 77.15.590 would prevent dude fishing, because the tourists are on the boat to fish for recreational purposes.

However, I believe an argument can be made that "dude fishermen" are paying for the right to be a member of the crew. I would assume most crew members earn their way onto a fishing boat and are required to work for an entire season. For individuals unable to leave their jobs and families for months at a time, but nevertheless wanting to experience life as a fisherman, dude fishing is a perfect solution. An individual with little or no experience can pay for the opportunity to be a member of the crew.

The argument which would have to be made with respect to § 77.15.590 is that the tourist is a crew member. The tourist, like real crew members, does not harvest fish for personal use. If the entire catch is sold at the end of the day, I would argue that the vessel is used solely for commercial purposes.

Of course, this issue should be thoroughly vetted with the Department of Fish and Wildlife before any commercial fisherman takes a tourist out on his boat. The DFW is the agency responsible for deciding whether taking a tourist on a commercial fishing boat is "charter fishing" or "commercial fishing" under § 77.15.590.

I have found no administrative agency or Washington State Supreme or Appellate Court opinions which interpret § 77.15.590, probably because of its recent enactment. Added by "An Act Relating to Fish and Wildlife Code Enforcement," Chapter 190, Laws of 1998, § 77.15.590 is a relatively new section of the Washington Code. The Legislature passed Engrossed Senate Bill (ESSB) 6328 because the enforcement of fish and wildlife laws had become unnecessarily complicated after the merger of the fisheries and wildlife departments. ESSB 6328 added sixty new provisions to the Code "which define new offenses, redefine existing criminal laws, and create a uniform approach to laws authorizing prosecution, sentencing, and punishment." (Senate Bill Report, SB 6328 (Feb. 5, 1998)). Section 77.15.590 was one of the new provisions added by ESSB 6328, but neither the House Bill Report nor the Senate Bill Report mentions § 77.15.590 or provides insight into why the Legislature prohibited the use of vessels as commercial fishing vessels and charter boats on the same day.

Even if dude fishing is prohibited by § 77.15.590, the Fish and Wildlife Commission could authorize such activities through a rulemaking if the Commission is so inclined. I did not contact anyone at the Washington Department of Fish and Wildlife regarding this matter, but I am happy to take the necessary steps to determine the agency's position if you are interested.

Thanks for approaching us with your question. Please contact us if you have additional questions regarding the above information.

Sincerely,

Stephanie Showalter
Director, Sea Grant Law Center