



# PROPOSED RULE MAKING

## CR-102 (June 2004)

(Implements RCW 34.05.320)

Do NOT use for expedited rule making

**Agency:** Washington Department of Fish and Wildlife

<input checked="" type="checkbox"/> <b>Preproposal Statement of Inquiry was filed as WSR; 09-20-034</b>	<input checked="" type="checkbox"/> <b>Original Notice</b>
<input type="checkbox"/> <b>Expedited Rule Making--Proposed notice was filed as WSR _____; or</b>	<input type="checkbox"/> <b>Supplemental Notice to WSR _____</b>
<input type="checkbox"/> <b>Proposal is exempt under RCW 34.05.310(4).</b>	<input type="checkbox"/> <b>Continuance of WSR _____</b>

**Title of rule and other identifying information:** (Describe Subject) WAC 220-52-068 Scallop fishery--Coastal waters – Outlaw use of dredge gear.

**Hearing location(s):**

Washington Department of Fish and Wildlife  
Region Six Office  
48 Devonshire Road  
Montesano, WA 98563

Date: January 5, 2010 Time: 9:00 A.M.

**Submit written comments to:**

Name: Rules Coordinator  
Address: 600 Capitol Way No., Olympia, WA 98501-1091  
e-mail [Lori.Preuss@dfw.wa.gov](mailto:Lori.Preuss@dfw.wa.gov)  
fax: (360) 902-2155 by (date) January 1, 2010

**Assistance for persons with disabilities:** Contact  
Dan Ayres by January 4, 2010

TTY (360) 902-2207 or (360) 249-4628 (ext. 209)

**Date of intended adoption:** On or after January 6, 2010  
(Note: This is **NOT** the **effective** date)

**Purpose of the proposal and its anticipated effects, including any changes in existing rules:**

State laws and rules can be more restrictive than their federal counterparts, but not less restrictive. WAC 220-52-068 requires the use of scallop dredge gear to harvest scallops in the coastal fishery. This conflicts with National Marine Fisheries Service regulation, 50 C.F.R. Part 660.306, prohibiting the use of dredge gear in groundfish essential fish habitat (EFH). Specifically, dredge gear is prohibited from high tide out to 200 miles, which coincides with where groundfish EFH occurs. The Department wants to amend WAC 220-52-068 to make it consistent with federal rules.

**Reasons supporting proposal:** WAC 220-52-068 is not consistent with federal rules. Amending WAC 220-52-068 eliminates the inconsistency.

**Statutory authority for adoption:** 77.04.020; 77.12.045; 77.12.047

**Statute being implemented:** 77.04.020; 77.12.045; 77.12.047

**Is rule necessary because of a:**

Federal Law?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No
Federal Court Decision?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
State Court Decision?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

If yes, CITATION:  
50 C.F.R. Part 660.306

**DATE**  
November 30, 2009

**NAME** (type or print)  
Lori Preuss

**SIGNATURE**

**TITLE**  
Rules Coordinator

**CODE REVISER USE ONLY**

<p>OFFICE OF THE CODE REVISER STATE OF WASHINGTON FILED</p> <p>DATE: November 30, 2009 TIME: 3:44 PM</p> <p><b>WSR 09-24-083</b></p>
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**Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters:**

None.

**Name of proponent:** (person or organization) The Washington Department of Fish and Wildlife

- Private
- Public
- Governmental

**Name of agency personnel responsible for:**

Name	Office Location	Phone
Drafting..... Dan Ayres	48 Devonshire Road, Montesano, WA 98563	(360) 249-4628
Implementation Jim Scott	1111 Washington Street, SE, Olympia, WA 98504	(360) 902-2651
Enforcement.....Chief Bruce Bjork	1111 Washington Street, SE, Olympia, WA 98504	(360) 902-2373

**Has a small business economic impact statement been prepared under chapter 19.85 RCW?**

Yes. Attach copy of small business economic impact statement.

A copy of the statement may be obtained by contacting:

Name:

Address:

phone ( ) \_\_\_\_\_

fax ( ) \_\_\_\_\_

e-mail \_\_\_\_\_

No. Explain why no statement was prepared. This activity has been prohibited federally for a few years, so these changes will not impact small businesses.

**Is a cost-benefit analysis required under RCW 34.05.328?**

Yes A preliminary cost-benefit analysis may be obtained by contacting:

Name:

Address:

phone ( ) \_\_\_\_\_

fax ( ) \_\_\_\_\_

e-mail \_\_\_\_\_

No: Please explain: This proposal does not involve hydraulics.

AMENDATORY SECTION (Amending Order 00-165, filed 8/22/00, effective 9/22/00)

**WAC 220-52-068 Scallop fishery--Coastal waters.** (1) It is unlawful to fish for or possess scallops taken for commercial purposes from the waters of the Exclusive Economic Zone (~~except as provided for in this section.~~

~~(1) Season: July 1 through November 30 in the waters of the Exclusive Economic Zone).~~

(2) It is unlawful to trawl for scallops in Washington territorial waters west of the Bonilla-Tatoosh line or in Marine Fish-Shellfish Management and Catch Reporting Area 29.

~~((2) Gear: Only scallop dredge gear may be used. Scallop dredge gear may not exceed fifteen feet in width per unit of gear and must have three inch or larger net mesh or rings throughout. Scallop dredges may not use a dredge liner nor have chaffing gear covering any portion of the top half of the dredge.~~

~~(3) Licensing: A shrimp trawl non-Puget Sound fishery license is the license required to operate the gear provided for in this section.~~

~~(4) Incidental catch: It is unlawful to retain food fish or shellfish taken incidental to any lawful scallop fishery, except that it is lawful to retain octopus and squid.)~~ (3) A violation of this section is punishable under RCW 77.15.520 Commercial fishing--Unlawful gear or methods--Penalty; and RCW 77.15.550 Violation of commercial fishing area or time--Penalty.