



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

- Preproposal Statement of Inquiry was filed as WSR 11-10-060 on 5-2-11; or
- Expedited Rule Making--Proposed notice was filed as WSR _____; or
- Proposal is exempt under RCW 34.05.310(4).

- Original Notice
- Supplemental Notice to WSR 11-14-100
- Continuance of WSR _____

Title of rule and other identifying information: (Describe Subject) WAC 220-52-052, Spot shrimp fishery--Coastal waters; and repeal of chapter 220-88B WAC, Coastal Spot Shrimp.

Hearing location(s):
 Washington Department of Fish and Wildlife
 Region Six Office
 48 Devonshire Road
 Montesano, WA 98563

Submit written comments to:
 Name: Rules Coordinator
 Address: WDFW Enforcement
 600 Capitol Way, N.
 Olympia, WA 98501-1091

E-mail: Lori.preuss@dfw.wa.gov
 Fax: (360)-902-2155 by (date) August 20, 2011

Date: Tuesday, August 30, 2011 Time: 9:30 a.m.

Assistance for persons with disabilities: Contact
Susan Galloway by August 20, 2011
 at (360) 902-2267 or by TTY at 1-800-833-6388

Date of intended adoption: On or after August 30, 2011
 (Note: This is **NOT** the **effective** date)

Purpose of the proposal and its anticipated effects, including any changes in existing rules: This supplemental CR-102 is needed to repeal chapter 220-88B WAC, which is being replaced by the new section, WAC 220-52-052. The original CR-102 filing failed to include the repealer for chapter 220-88B WAC.

Substitute House Bill 1148 (2011) establishes a coastal spot shrimp license limitation program. These rules are needed to implement the program and largely replicate rules used to manage this fishery over the past decade under the Emerging Commercial Fisheries Act (ECFA). Under the ECFA, a permit (issued at no cost) was required to participate in the coastal spot shrimp fishery. These rules continue this requirement for a permit (issued at no cost) to preserve WDFW's ability to place observers on board vessels participating in the coastal spot shrimp fishery and/or to add conditions as necessary to ensure the sustainable management of the spot shrimp resource and the marine ecosystem of which it is part.

Reasons supporting proposal: This rule implements SHB 1148 and provides for a commercial spot shrimp fishery while managing the state's spot shrimp resources.

Statutory authority for adoption: RCW 77.04.020 and 77.12.047

Statute being implemented: RCW 77.04.020 and 77.12.047

Is rule necessary because of a:

- Federal Law? Yes No
 - Federal Court Decision? Yes No
 - State Court Decision? Yes No
- If yes, CITATION:

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
 STATE OF WASHINGTON
 FILED

DATE: July 20, 2011
 TIME: 11:16 AM

WSR 11-15-098

DATE
 July 20, 2011

NAME (type or print)
 Lori Preuss

SIGNATURE

TITLE
 Rules Coordinator

Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters:

None.

Name of proponent: (person or organization) 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: Lori Preuss

Address: 600 Capitol Way, N.
Olympia, WA 98501-1091

Phone: (360) 902-2930

Fax: (360) 902-2155

E-mail: Lori.preuss@dfw.wa.gov

No. Explain why no statement was prepared.

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: These proposals do not affect hydraulics.

Small Business Economic Impact Statement

1. Description of the reporting, record keeping, and other compliance requirements of the proposed rule:

The Washington Department of Fish and Wildlife (WDFW) has managed the coastal spot shrimp fishery under the Emerging Commercial Fishery Act (ECFA) since 1999. The proposed rules mirror those that have been used over the last several years while the fishery was managed under ECFA.

The one record keeping requirement that will be continued is a requirement that commercial fishers participating in the coastal spot shrimp fishery maintain a log book.

2. Kinds of professional services that a small business is likely to need in order to comply with such requirements:

There are no professional services a commercial fisher will need to comply with the requirements of these rules.

3. Costs of compliance for businesses, including costs of equipment, supplies, labor, and increased administrative costs:

The proposed rules – which mirror the rules used to manage the fishery under the ECFA - carry potential compliance costs that include (a) license purchase; and (b) gear restrictions:

- (a) These rules require that commercial fishers purchase a standard limited entry spot shrimp pot license. Fishers who held an experimental fishery permit while the fishery was managed under the ECFA will be issued a standard limited entry coastal spot shrimp pot license for the cost of the license. New fishers entering the fishery will be required to purchase a license from an existing license holder at a mutually agreed-upon price.
- (b) These rules would impose several gear restrictions during coastal spot shrimp pot fisheries. All gear restrictions proposed by the rules are identical to gear restrictions WDFW has required in recent years for coastal spot shrimp pot fisheries. Businesses should be accustomed to these gear restrictions, and vessels that have participated in the coastal spot shrimp fishery in recent years have already purchased equipment that meets the requirements.

Although WDFW does not consider the coastal spot shrimp pot fishery gear restrictions new requirements, since they have been imposed in recent years, WDFW estimates the cost of compliance with these requirements is as follows.

The cost of each pot is estimated to be \$105. This is for a pot with a size that exceeds a maximum 153-inch bottom perimeter and a maximum 24-inch height and is constructed with net webbing or rigid mesh. At least 50 percent of the net webbing or mesh covering the sides of the pot must easily allow passage of a 7/8-inch diameter dowel and have an escape mechanism as provided for in WAC 220-52-035.

The required set line end marker buoys, pole, flag, radar reflector, and operating light together will cost approximately \$1,000.

Assuming a business would need to buy all new gear (up to the full 500-pot limit), it is estimated that the cost would be \$53,500. It should be noted that this fishing gear will last for many seasons.

WDFW does not have access to the necessary data to estimate an individual business' labor or administrative costs.

4. Will compliance with the rule cause businesses to lose sales or revenue?

The proposed rules are necessary in order to provide the opportunity to catch harvestable spot shrimp in a manner that will allow for sustainable stocks and sustainable future harvest.

Therefore, the proposed rules should not cause any businesses to lose sales or revenue but will likely increase sales and revenue relative to opportunities for the fishers, absent compliance with the rules.

5. Cost of compliance for small businesses compared with the cost of compliance for the ten percent of businesses that are the largest businesses required to comply with the proposed rules using one or more of the following as a basis for comparing costs:

1. Cost per employee;
2. Cost per hour of labor; or
3. Cost per one hundred dollars of sales

The only metric available to the department for identifying the cost of compliance is the cost of fishing gear that meets the requirement in these rules, compared to the ex-vessel value of spot shrimp sold by each coastal spot prawn commercial EFCA permit holder in recent years. This ex-vessel value is used as a surrogate for sales in this analysis, but it is an underestimate of total sales, since all of the affected businesses have additional revenue from other fisheries. In addition, this analysis assumes that all current EFCA permit holders (who will be eligible to convert their EFCA permits to limited entry commercial spot shrimp licenses) will be required to purchase equipment described above in (3). All of the current EFCA permit holders already own the gear that meets the requirements, and they will *not be required to purchase new gear*. These two factors combined mean that the cost of compliance per one hundred dollars of sales will be overestimated for small and large businesses.

There are currently eight coastal spot shrimp pot ECFA permit holders that participated in the coastal spot prawn fishery in 2009 or 2010. The average cost of compliance per license is approximately \$53,500, using the *unlikely* assumption that all license holders will be required to spend the amounts described above in (3). The businesses affected by these rules qualify as small businesses, so an average cost of compliance for all businesses was calculated using the average ex-vessel value for 2009 and 2010. This average was \$70,893. This means that the cost of compliance per \$100 of ex-vessel value would be \$75.47. However, this estimated cost of compliance is believed to be a gross overestimate because, as is describe above, all current EFCA permit holders that will be eligible to convert their permits to limited entry commercial coastal spot shrimp licenses already own this fishing equipment. These rules make no changes in the requirements for the gear already purchased by the affected businesses.

6. Steps taken by the agency to reduce the costs of the rule on small businesses, or reasonable justification for not doing so:

Most businesses affected by these rules are small businesses. As indicated above, all of the gear restrictions proposed by the rules apply only to the coastal spot shrimp pot fishery and are identical to gear restrictions the Department has required in recent coastal spot shrimp fishery seasons. By imposing similar requirements it is likely that commercial fishers will already have the gear needed to comply with the regulations. Therefore, the gear restrictions will not impose new costs on small businesses. In addition, WDFW will provide to holders of coastal commercial spot shrimp licenses the log book they require, free of charge.

7. A description of how the agency will involve small businesses in the development of the rule.

In the development of the supporting legislation (HB1448), WDFW interacted with and received input from affected ECFA permit holders (the small business owners referred to here) through a series of meetings that occurred in 2010 and early 2011. In addition, a formal public hearing is scheduled in August 2011 to gather input on the specific rules being proposed here. These meetings allowed constituents to participate in formulating these rules, and the August meeting will allow constituents to comment on the final draft.

8. A list of industries that will be required to comply with the rule:

All licensed fishers participating in the Washington coastal commercial spot shrimp pot fishery will be required to comply with these rules.

9. An estimate of the number of jobs that will be created or lost as a result of compliance with the proposed rule.

As explained above, these rules impose similar requirements used in the Washington coastal commercial spot shrimp pot fishery. Compliance with the rules will not result in the creation or loss of jobs.

REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 220-88B-010	Emerging commercial fishery-- Coastal--Purpose.
WAC 220-88B-020	Designation of the coastal spot shrimp pot fishery as an emerging commercial fishery.
WAC 220-88B-030	Emerging commercial fishery-- Eligibility for coastal experimental fishery permits--Terms and conditions of use--Renewal-- Vessel restriction--Incidental catch.
WAC 220-88B-040	Coastal spot shrimp pot experimental fishery--Season and gear--Species restriction.

NEW SECTION

WAC 220-52-052 Ocean spot shrimp pot fishery--Coastal waters.

It is unlawful to fish for, possess, or deliver ocean spot shrimp (*Pandalus platyceros*) taken for commercial purposes from state waters west of the Bonilla-Tatoosh line, or from offshore waters, except as provided for in this section:

License and area

(1) It is unlawful to fish for, possess, or deliver spot shrimp taken for commercial purposes from state waters west of the Bonilla-Tatoosh line, or from offshore waters, unless the fisher has a valid Washington-coastal spot shrimp pot fishery license. A violation of this subsection is punishable under RCW 77.15.500, Commercial fishing without a license--Penalty.

(2) It is unlawful to fish for or possess spot shrimp or to set spot shrimp gear in waters of the Pacific Ocean adjacent to the state of Oregon without the licenses or permits required to commercially fish for spot shrimp within the state waters of Oregon. A violation of this subsection is punishable under RCW 77.15.550, Violation of commercial fishing area or time--Penalty.

Season

(3) It is unlawful to fish for, take, or possess spot shrimp on board a commercial fishing vessel, except from March 15 through September 15 of each year. A violation of this subsection is punishable under RCW 77.15.550, Violation of commercial fishing area or time--Penalty.

(4) The total allowable catch of spot shrimp taken from waters west of the Bonilla-Tatoosh line and from offshore waters during a calendar year is 200,000 pounds round weight. Of this 200,000 pounds round weight, no more than 100,000 pounds can be taken south of 47 degrees 04.00' N. latitude, and no more than 100,000 pounds can be taken north of 47 degrees 04.00' N. latitude.

Gear

(5) It is unlawful to fish with spot shrimp pot gear for commercial purposes if the pots exceed a maximum 153-inch bottom perimeter and a maximum 24-inch height. It is unlawful to possess spot shrimp taken with spot shrimp pot gear that exceeds a maximum 153-inch bottom perimeter and a maximum 24-inch height.

(a) Shrimp pot gear must be constructed with net webbing or rigid mesh. At least 50 percent of the net webbing or mesh covering the sides of the pot must easily allow passage of a seven-eighths inch diameter dowel.

(b) Pot gear is required to have an escape mechanism as provided for in WAC 220-52-035.

(c) Set line end marker buoys must be floating and visible on the surface of the water, equipped with a pole, flag, radar reflector, and operating light, and marked with the clear

identification of the license holder and the vessel designated on the coastal spot shrimp pot license.

(6) It is unlawful to fish for spot shrimp for commercial purposes with more than a maximum of 500 pots. It is unlawful to possess spot shrimp taken for commercial purposes with more than a maximum of 500 pots.

(7) A violation of subsection (5) or (6) of this section is punishable under RCW 77.15.520, Commercial fishing--Unlawful gear or methods--Penalty.

Incidental catch

(8) It is unlawful for persons fishing in any coastal spot shrimp fishery to deliver spot shrimp while having on board the fishing vessel any bottomfish taken in the coastal bottomfish fishery under WAC 220-44-050.

(9) It is unlawful to retain any species of finfish or shellfish taken with spot shrimp pot gear, except octopus, squid, or up to 50 pounds round weight of other shrimp species taken incidentally with spot shrimp pot gear.

(10) A violation of subsection (8) or (9) of this section is punishable under RCW 77.15.550, Violation of commercial fishing area or time--Penalty.

Harvest logs

(11) It is unlawful for any spot shrimp pot fishery license holder or vessel operator engaged in fishing for spot shrimp in the coastal commercial spot shrimp fishery to fail to complete a department-issued harvest log for all fishing activity in state or offshore waters.

(12) It is unlawful for any vessel operator engaged in fishing for spot shrimp for commercial purposes to fail to comply with the following method and time frame related to harvest log submittal and recordkeeping:

(a) Completed harvest logs must be submitted so that the department receives them within ten days following any calendar month in which fishing occurred. Washington-coastal spot shrimp pot license holders can submit the completed harvest logs to a WDFW employee upon request, or mail the completed harvest logs to Washington Department of Fish and Wildlife, Attention: Coastal Spot Shrimp Manager, 48 Devonshire Rd., Montesano, WA 98563.

(b) Washington-coastal spot shrimp pot license holders or vessel operators engaged in fishing for spot shrimp in the coastal commercial fishery must complete a harvest log entry for each day fished, prior to offloading the spot shrimp. Washington-coastal spot shrimp pot license holders must maintain a copy of all submitted harvest log entries for no less than three years after the fishing activity ended.

(c) Washington-coastal spot shrimp pot license holders or vessel operators can obtain a harvest logbook by contacting the department's coastal spot shrimp manager at 360-249-4628.

(13) A violation of subsection (11) or (12) of this section is a misdemeanor, punishable under RCW 77.15.280, Reporting of fish or wildlife harvest--Rules violation--Penalty.

Permit

(14) It is unlawful to fish for, retain, land, or deliver spot shrimp taken with pot gear for commercial purposes without a valid coastal spot shrimp pot fishery permit.

(15) It is unlawful to take, retain, land, or deliver any spot shrimp taken with pot gear without complying with all provisions of a coastal spot shrimp pot fishery permit.

(16) A violation of subsection (14) or (15) of this section is punishable under RCW 77.15.750, Unlawful use of a department permit--Penalty.