

4. Commercial Shellfish Pot Gear – Rule Briefing and Public Hearing

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“GREEN SHEET”

Meeting: April 8-9, 2011

Agenda Item #4: Commercial shellfish pot gear—Escape mechanism required—
Rule Briefing and Public Hearing (WAC 220-52-035)

Prepared By: Heather Reed, Coastal Marine Resource Policy,
Intergovernmental Resource Management

Presented By: Heather Reed, Coastal Marine Resource Policy,
Intergovernmental Resource Management

Background:

Sometimes commercial fishermen double or wrap a single strand of cotton twine or other natural fiber multiple times when lacing or sewing closed the wire mesh of shellfish pot gear. Other times they use multiple strands of the twine or fiber. These activities prevent shellfish from escaping if the shellfish pot gear is lost or abandoned.

The proposed changes to this rule are intended to clarify the current language so that it is clear that it is lawful to use a single strand of cotton twine or other natural fiber that is tied together at the ends so that it can be looped between a pot’s tie-down straps and lid hook to connect them together. The proposed changes will also clarify that it is unlawful to use multiple strands of fiber or to double or wrap the fiber multiple times when lacing or sewing a pot’s wire mesh closed.

These rule changes will make the rule easier to enforce and will allow pot-gear escape mechanisms to work as intended if pots are lost or abandoned.

Policy Issue(s) you are bringing to the Commission for consideration:

Does the Commission want to make the rule for commercial shellfish pot-gear escape mechanisms easier to enforce, and allow the escape mechanisms to work as intended?

Public involvement process used and what you learned:

Fish program and enforcement staff worked with the coastal crab industry through the Coastal Dungeness crab Advisory Board during the development of the proposed changes. The Department filed a CR-102 on February 9, 2011. A letter was sent to coastal commercial crab fishers on March 2, 2011, informing them of the proposed rule changes. We have received no public comments.

Action requested (identify the specific Commission decisions you are seeking):

Receive Department staff presentation and any comments from the public. Formal rule action is planned for the April 15, 2011, Commission conference call.

Draft motion language:

N/A

Justification for Commission action:

The proposed changes will save shellfish that are caught in pots that are lost or abandoned by allowing the shellfish to escape and will allow Department enforcement staff to issue citations for gear that is in violation of the rule.

Communications plan:

Department staff’s proposed changes are on the Department’s “current rule making activity” page of its Website. The Fish Program will notify the coastal crab industry on the changes.



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 10-22-005 on 10/20/10;
 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 _____
 Continuance of WSR _____

Title of rule and other identifying information: (Describe Subject)
WAC 220-52-035, Commercial shellfish pot gear – Escape mechanism required

Hearing location(s):
Natural Resources Building
Director's Conference Room, 5th Floor
1111 Washington St SE
Olympia WA 98504

Date: April 15, 2011 Time: 8:30 a.m.

Date of intended adoption: On or after April 15, 2011
(Note: This is NOT the effective date)

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

E-mail: Lori.Preuss@dfw.wa.gov
Fax: (360) 902-2155 by (date) March 31, 2011

Assistance for persons with disabilities: Contact
Susan Galloway by March 31, 2011
at (360) 902-2267 or at TTY at 1-800-833-6388

Purpose of the proposal and its anticipated effects, including any changes in existing rules: The department seeks more stringent rules for shellfish pot escape mechanisms so that the rules are easier to enforce and the mechanisms can work as intended. This will save shellfish that are trapped in lost and abandoned pots.

Reasons supporting proposal: This proposal will allow the Washington Department of Fish and Wildlife to protect the state's shellfish resources and enhance commercial and recreational shellfish harvesting opportunities.

Statutory authority for adoption: RCWs 77.04.012 and 77.12.047

Statute being implemented: RCWs 77.04.012 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: **February 09, 2011**

TIME: **9:48 AM**

WSR **11-05-042**

DATE
February 9, 2011

NAME (type or print)
Lori Preuss

SIGNATURE

TITLE
Rules Coordinator

(COMPLETE REVERSE SIDE)

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..... Lori Preuss	1111 Washington Street, SE, Olympia	(360) 902-2930
Implementation.... Mike Cenci	1111 Washington Street, SE, Olympia	(360) 902-2938
Enforcement..... Bruce Bjork	1111 Washington Street, SE, Olympia	(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.

The costs for commercial shellfishers to comply with this rule are negligible. These fishermen already use the required materials to provide for shellfish escapement. This rule simply directs the fishermen to use only one single strand of cotton when lacing or sewing wire mesh of shellfish pots closed. The rule prohibits fishermen from wrapping the single strand of cotton multiple times or doubling it.

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 06-38, filed 3/9/06, effective 4/9/06)

WAC 220-52-035 Commercial shellfish pot gear--Escape mechanism required. It is unlawful to fish for or possess crab, shrimp, or crawfish taken for commercial purposes with shellfish pot gear unless the gear allows for escapement using at least one of the following methods:

(1) Attachment of pot lid hooks or tiedown straps with a single strand or loop of untreated cotton twine or other natural fiber no larger than thread size 120 so that the pot lid will open freely if the twine or fiber is broken. It is permissible to use a single strand of cotton twine or other natural fiber tied together at the ends so that it can be looped between the tie down straps and the lid hook to connect them together.

(2) Providing an opening in the pot mesh no less than three inches by five inches ((which is)) and laced or sewn closed with one single strand of untreated cotton twine or other natural fiber no larger than thread size 120. The single strand of cotton may not be wrapped multiple times or doubled in any way when lacing or sewing the wire mesh closed. The opening must be located within the top half of the pot and be unimpeded by the entry tunnels, bait boxes, or any other structures or materials.