



PROPOSED RULE MAKING

CR-102 (June 2012)

(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 14-03-134 **on** 01/22/14;
or
 Expedited Rule Making--Proposed notice was filed as WSR _____; **or**
 Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1).

Original Notice
 Supplemental Notice to WSR _____
 Continuance of WSR _____

Title of rule and other identifying information:

The Washington Department of Fish and Wildlife is considering rule amendments relating to the commercial harvest of mackerel in the coastal sardine purse seine fishery.

WAC 220-44-095, Coastal sardine purse seine fishery—Harvest landing, and reporting requirements.

Hearing location(s):
 WDFW Region 6 Office
 48 Devonshire Road
 Montesano, WA 98563

Date: April 29, 2014 Time: 10:00 a.m.

Submit written comments to:
 Name: Joanna Eide, Rules Coordinator
 Address: 600 Capitol Way N
 Olympia, WA 98501
 e-mail Rules.Coordinator@dfw.wa.gov
 fax (360) 902-2155 by (date) April 22, 2014

Assistance for persons with disabilities: Contact
Tami Lininger by April 22, 2014
 TTY 1-800-833-6388 or (360) 902-2207

Date of intended adoption: on or after April 30, 2014
 (Note: This is **NOT** the **effective** date)

Purpose of the proposal and its anticipated effects, including any changes in existing rules: This proposal will establish a jack (*Carangidae*) and mackerel (*Scombridae*) incidental catch limit of 45% of total landed catch, by weight, in the directed Pacific sardine fishery. The commercial sardine purse seine limited entry program established in 2009 did not provide for the landing of jacks (*Carangidae*) and mackerels (*Scombridae*) in the directed fishery. This proposal will allow catch to include jacks (*Carangidae*) and/or mackerels (*Scombridae*). This proposal also clarifies language and improves rule structure.

Statutory authority for adoption: RCW 77.04.012, 77.04.020, 77.04.055, and 77.12.047

Statute being implemented: RCW 77.04.012, 77.04.020, 77.04.055, and 77.12.047

Is rule necessary because of a:

Federal Law?	<input type="checkbox"/> Yes	<input checked="" 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:

DATE
 March 19, 2014

NAME (type or print)
 Joanna Eide

SIGNATURE

TITLE
 Rules Coordinator

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
 STATE OF WASHINGTON
 FILED

DATE: March 19, 2014
TIME: 9:33 AM

WSR 14-07-111

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

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.....	Lorna Wargo	48 Devonshire Road, Montesano, WA	(360) 249-1221
Implementation....	Lorna Wargo	48 Devonshire Road, Montesano, WA	(360) 249-1221
Enforcement.....	Steven Crown	1111 Washington Street SE, Olympia, WA	(360) 902-2373

Has a small business economic impact statement been prepared under chapter 19.85 RCW or has a school district fiscal impact statement been prepared under section 1, chapter 210, Laws of 2012?

Yes. Attach copy of small business economic impact statement or school district fiscal impact statement.

A copy of the statement may be obtained by contacting:

Name: Joanna Eide

Address:

600 Capitol Way N
Olympia, WA 98501

phone (360) 902-2403

fax (360) 902-2155

e-mail Rules.Coordinator@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: This proposal does not involve hydraulics.

Attachment 1

Small Business Economic Impact Statement Coastal Sardine Purse Seine Rule Change

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

This proposed rule change will establish a jack (*Carangidae*) and mackerel (*Scombridae*) incidental limit of 45% of total landed catch in the Washington coastal directed Pacific sardine purse seine fishery since legislative authority does not currently exist for a directed jack or mackerel fishery. This rule also clarifies language and improves rule structure.

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

Commercial fishers and dealers will use existing and already established business operations to document catch on fish landing receipts. This rule proposal does not impose new or expand upon current requirements for reporting catch in the directed Pacific sardine fishery.

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

There are no additional costs to businesses.

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

No, compliance with the rule will not cause lost sales or revenue for businesses. The proposed rule expands opportunity for fishers and dealers by establishing an incidental allowance for jacks (*Carangidae*) and/or mackerels (*Scombridae*) of up to 45% by weight per Pacific sardine landing. The commercial Pacific sardine limited entry license program established in 2009 does not authorize the landing of jacks (*Carangidae*) and mackerels (*Scombridae*) in a directed fishery for these species; Washington Administrative Code only provides for the bycatch of mackerels which by definition is to be a nominal amount of the total landing. This rule proposal will increase opportunity by permitting an incidental allowance, i.e. up to 45% of jacks (*Carangidae*) and/or mackerels (*Scombridae*) per Pacific sardine landing.

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 proposed rule will not require any additional costs, labor, or equipment. The operations for fishers and dealers are the same whether the landed catch is comprised of 100 percent Pacific sardine or some combination of Pacific sardine and jacks (*Carangidae*) and/or mackerels (*Scombridae*).

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

The cost of compliance to this rule change is negligible since this rule will not significantly alter the fishery. For this reason, WDFW did not need to take steps to reduce the costs.

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

WDFW routinely interacts with and receives input from affected businesses through industry meetings and informal interactions. A meeting to address this specific rule proposal is scheduled for April 29, 2014, at 10:00 a.m. at the WDFW Region 6 Office at Montesano, WA.

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

All licensed sardine fishers participating in the directed sardine fishery will be required to comply with this rule.

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

Compliance with this rule will neither create jobs nor cause jobs to be lost since this rule will essentially maintain a conservative harvest of jacks (*Carangidae*) and/or mackerels (*Scombridae*) in the Pacific sardine fishery.

WAC 220-44-095 Coastal sardine purse seine fishery—Harvest, landing, and reporting requirements—Gear. (1) Licensing, harvest, and reporting requirements. It is unlawful for persons fishing under a Washington sardine purse seine fishery license or temporary annual fishery permit to fail to:

(a) Carry an observer onboard for any sardine fishing trip if requested by the department;

(b) Surrender up to five hundred sardines per vessel per trip if requested by department samplers for biological information; and

(c) Complete a department-issued logbook each month in which fishing activity occurs, and submit it to the department by the 15th day of the following month.

(2) **Possession, transport, and seasons.**

(a) It is unlawful to possess, transport through the waters of the state, or deliver into any Washington port, Pacific sardine (*Sardinops sagax*) or other coastal pelagic species taken in violation of gear requirements and other rules published in Title 50, Part 660, Subpart I of the Code of Federal Regulations (C.F.R.). These federal regulations govern commercial fishing for coastal pelagic species in the Exclusive Economic Zone off the coasts of Washington, Oregon, and California. Where the federal regulations refer to the fishery management area, that area is interpreted to include Washington state waters coterminous with the Exclusive Economic Zone. Updates to the federal regulations are published in the Federal Register. Discrepancies or errors between the C.F.R. and Federal Register will be resolved in favor of the Federal Register. This chapter incorporates the C.F.R. by reference and is based, in part, on the C.F.R. A copy of the federal rules may be obtained by contacting (~~Lori Preuss~~) the department of fish and wildlife rules coordinator at (~~360-902-2930~~) 360-902-2403, or going to the U.S. Government Printing Office's GPO Access web site (www.gpoaccess.gov). State regulations that are more restrictive than the federal regulations will prevail.

(b) It is unlawful to fish for or possess Pacific sardine taken with any gear from coastal waters except during the coastal sardine fishery season (~~is~~) open to purse seine fishing each year (~~only~~) from April 1st through December 31st.

(c) It is unlawful to take Pacific sardine in state waters except for the incidental take authorized by the coastal baitfish regulations.

(~~e~~) (d) It is unlawful to retain any species that is taken incidental to sardine, except for anchovy, mackerel, and market squid (*Logligo opalescens*).

(e) It is unlawful to retain mackerel (*Scombridae*) or jacks (*Carangidae*) taken incidental to a lawful sardine fishery that in combination exceeds forty-five percent of the weight of the total landing.

(f) It is unlawful to fail to release any salmon encircled in the purse seine (~~must be released~~) prior to completion of the set (~~, and no salmon may be landed~~) or to land or retain salmon on the fishing vessel.

(~~d~~) (g) It is unlawful to transfer sardine catch from one fishing vessel to another.

(~~e~~) (3) **Landing and delivery.**

(a) It is unlawful to fail to have legal purse seine gear as defined by department rule aboard ((the)) a vessel making a sardine landing.

~~((f))~~ (b) It is unlawful to fail to deliver sardine landings to a ((shore-side)) processing facility located on shore.

~~((g))~~ Once a delivery has commenced at a processing plant, all fish on board the vessel must be offloaded at that plant.

~~(h))~~ (c) It is unlawful to land fish at more than one processing facility and to fail to offload all fish onboard the vessel once the delivery commences at the time of landing.

(d) It is unlawful to deliver more than fifteen percent cumulative weight of sardines for the purposes of conversion into fish flour, fish meal, fish scrap, fertilizer, fish oil, other fishery products, or by-products, for purposes other than human consumption or fishing bait used during the sardine fishery season.

~~((2))~~ License owners must designate a vessel upon issuance or renewal of the license and must be identified as either the vessel owner or primary license operator.

~~(3)~~ Persons fishing under a Washington sardine purse seine fishery license or temporary annual fishery permit must:

~~(a)~~ Carry an observer on board for any sardine fishing trip if requested by the department;

~~(b)~~ Surrender up to five hundred sardines per vessel per trip if requested by department samplers for biological information; and

~~(c)~~ Complete a department issued logbook each month in which fishing activity occurs, and submit it to the department by the 15th day of the following month.)

(4) A violation of the reporting requirements ((under)) provided in this section is punishable ((pursuant to)) under RCW ((77.15.280)) 77.15.560, Commercial fish, shellfish harvest or delivery-Failure to report-Penalty.

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

(6) A violation of the harvest((7)) or landing requirements ((under)) provided in this section is punishable ((pursuant to)) under RCW ((77.15.520)) 77.15.550, Violation of a commercial fishing area or time-Penalty.