



PROPOSED RULE MAKING

CR-102 (October 2014)

(Implements RCW 34.05.320)

Do NOT use for expedited rule making

Agency: Washington Department of Fish and Wildlife (WDFW)

- Preproposal Statement of Inquiry was filed as WSR 14-17-119 on 8/20/14; 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: This proposed rulemaking involves additional state sorting requirements for slope rockfish. The proposal includes amendments to WAC 220-44-050 and 220-69-230 to (1) Clarify existing requirements and add new requirements regarding how certain fish species delivered into the state are reported on fish receiving tickets, and (2) Update contact information for obtaining federal regulations incorporated by reference in state regulation for coastal bottomfish/groundfish.

Hearing location(s):
WDFW Regional 6
Small Conference Room
48 Devonshire Road
Montesano, WA 98563

Date: November 25, 2014 Time: 10:00 a.m. to 12:00 noon

Date of intended adoption: On or after November 25, 2014
(Note: This is **NOT** the **effective** date)

Submit written comments to:

Name: Corey Niles, Coastal Marine Policy Lead

Address: WDFW Region 6 Headquarters

48 Devonshire Road, Montesano, WA 98563

E-mail: Corey.Niles@dfw.wa.gov

Fax: (360) 249-1299 by (date) November 18, 2014

Assistance for persons with disabilities: Contact:

Tami Lininger by November 18, 2014

TTY (800) 833-6388 or (360) 902-2267

Purpose of the proposal and its anticipated effects, including any changes in existing rules: Federal regulations for 2015 will require individual reporting of landings of Shortraker Rockfish (*Sebastes borealis*) and Rougheye Rockfish (*Sebastes aleutianus*)/ Blackspotted Rockfish (*Sebastes melanostictus*). Fish buyers currently report landings of these species on fish receiving tickets under a "slope rockfish" market category that can also include a number of other species. WDFW proposes rule amendments to supplement the new federal requirement by requiring individual reporting of the remaining slope rockfish.

Reasons supporting proposal: WDFW samples a portion of landings of slope rockfish to tally the species specific composition of the market category using a statistical sampling design. These species specific proportions are applied to all landings into the slope rockfish category to produce estimates of landed catch by species for all fish reported on fish receiving tickets as slope rockfish. The three species to be newly sorted in 2015 by federal regulations make up a substantial portion of the slope rockfish landings into Washington. With their removal, the market category will include fewer and less frequently seen species and the current statistical sampling approach may become impractical or inefficient. Sorting by fishery participants and buyers is needed to produce accurate accounting of landings for the remaining slope rockfish species.

Statutory authority for adoption: RCW 77.04.012, 77.04.020, 77.04.055, 77.04.090, 77.15.045, and 77.12.047.

Statute being implemented: RCW 77.04.012, 77.04.020, 77.04.055, 77.04.090, 77.15.045, 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:

DATE
October 22, 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: October 22, 2014

TIME: 9:25 AM

WSR 14-21-173

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

None.

Name of proponent: Washington Department of Fish and Wildlife.

- Private
- Public
- Governmental

Name of agency personnel responsible for:

Name	Office Location	Phone
Drafting..... Corey Niles	48 Devonshire Road, Montesano, WA 98563	(360) 902-2938
Implementation..... Corey Niles	48 Devonshire Road, Montesano, WA 98563	(360) 902-2938
Enforcement..... Chief Steve Crown	1111 Washington St. SE, Olympia, WA 98504	(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: Corey Niles, Coastal Marine Policy Lead

Address:

WDFW Region 6 Headquarters

48 Devonshire Road

Montesano, WA 98563

phone (360) 249-1223

fax (360) 249-1299

e-mail Corey.Niles@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 involve hydraulics.

Small Business Economic Impact Statement Proposed Sorting Requirements for Commercial Deliveries of Slope Rockfish

1. Background and description of the requirements of the proposed rule:

Commercial fishers bringing their catch into Washington must report their deliveries on a fish receiving ticket (WAC 220-69-215 and 220-69-241). This reporting duty also applies to individuals who first purchase or receive the delivery (WAC 220-69-240). Many commercial fish deliveries will include several species of fish that are identified on fish receiving tickets by species or by a market category that combines multiple species. For each species or market category, the primary information recorded on the receiving tickets includes the total weight of the fish (or number of fish for certain species) and the price paid by the purchaser.

For commercial deliveries of bottomfish (a.k.a. groundfish), the state requires the species and market categories reported on fish receiving tickets to be consistent with the Pacific Fishery Management Council's (PFMC) Pacific Coast Groundfish Fishery Management Plan and related regulations (WAC 220-69-230(u) and 220-44-050). These species and species groups derive from those that the PFMC uses when setting annual allowable catch levels ("harvest specifications"), creating management measures designed to keep catches within desired levels, or establishing sorting designations that are intended to aid in the tracking of landed catch.

This rulemaking focuses on one of the PFMC's current species categories, the Slope Rockfish market category/stock complex (*see #8 below*). The Slope Rockfish species group combines several species of the genus *Sebastes* that were originally grouped together because of their similarity of appearance and the assumption that they are likely to be caught together. In 2015, federal regulations will change to require the following three species currently landed into the Slope Rockfish market category to be sorted out: Rougheye Rockfish (*Sebastes aleutianus*), Blackspotted Rockfish (*Sebastes melanostictus*), and Shortraker Rockfish (*Sebastes borealis*). Rougheye Rockfish and Blackspotted Rockfish are very closely related species and very difficult to tell apart visually. The federal regulations will therefore require the two to be landed and reported together in a Rougheye/Blackspotted species group. This new federal requirement will affect three main fishing vessel types: bottom trawl, midwater trawl vessels targeting Pacific Whiting (*Merluccius productus*), and fixed gear "hook and line" vessels that primarily target Sablefish (*Anoplopoma fimbria*).

The PFMC recommended the pending federal regulations to improve confidence in the accuracy of landings data of the three species listed above into Washington, Oregon, and California. As part of this rulemaking, the Department proposes additional sorting requirements—ranging from sorting all Slope Rockfish species to sorting one additional species—out of concern that the federal regulatory change will adversely impact the accuracy of

the state's landings records for the remaining Slope Rockfish, or potentially render current methods for tracking landings inefficient.

The difficulty in differentiating the Slope Rockfish species is a major motivating factor in requiring landings be made into a market category instead of by species. Fish receiving tickets are self-reported, and for much of the groundfish fishery's history, they have not been verified on every landing. If species are difficult to distinguish from one another, then commercial fishers and buyers are more likely to misidentify and misreport landings, thereby reducing the accuracy of the data. Maintaining accurate data on fish landings is fundamental for several purposes, including the core assessments of a fishery's sustainability, collecting state revenues on fish landings, allocating allowable catches among fishery sectors or individuals, and various other conservation and management purposes.

To reduce inaccuracies caused by species misidentification, the Department uses expert biologists to sample certain landings of Slope Rockfish using a statistical sampling design. These samples are then used to estimate species specific landings amounts for all landings into the Slope Rockfish market category. The estimates are specific to gear type and port of delivery and combine all samples collected over a three-month period (i.e. by quarter). In general, the Department expects the sampling program will produce sufficiently accurate estimates if the samples taken represent the un-sampled landings, and if the percentage of landings covered are adequate. Adequate coverage depends on the frequency and variability of landings. Accurate estimates for more rarely and infrequently landed species generally require higher coverage levels.

The Department is evaluating how the removal of Rougheye Rockfish, Shortraker Rockfish, and Blackspotted Rockfish from the Slope Rockfish market category might affect sampling coverage levels. These three species make up a significant proportion of the Slope Rockfish landings into the state. The specific concerns with removing the three species from the market category include: (1) potential negative impacts to the Department's sampling program by requiring samplers to spend substantial time on quality control of the new sorting categories; and (2) that remaining Slope Rockfish may arrive in more sporadic and smaller volumes making it more difficult to obtain adequate sampling coverage. Moreover, the remaining volumes of Slope Rockfish may be small enough for commercial fishers and fish buyers to handle more efficiently than can be done with a sampling approach.

The Department will be closely considering these issues of sampling efficiency together with the potential impacts to commercial fishers and fish buyers before moving forward with additional sorting requirements.

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

The Department does not anticipate the proposed requirements will increase the professional services needed by small businesses. Commercial fishing crews, fish buyers and

other seafood processing workers must already identify and sort several species of rockfish and other groundfish. Existing fishing vessel crews and processing plant employees can learn to identify the various Slope Rockfish species with additional training. The pending new federal requirements for Rougheye Rockfish, Blackspotted Rockfish, and Shortraker Rockfish will already require such training.

Over 70 percent of Slope Rockfish landed into the state are made by vessels participating in the PFMC individual fishing quota program. Federal observers or catch monitors are present for deliveries of groundfish made under this program and would be available to help with species identification. The Department's port samplers and other staff have helped fishing and processing operations with species identification training in the past and will continue to do so.

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

Any increase in costs would come from the increased time it takes to handle and identify the additional species requiring sorting. The Department's proposed sorting requirements would be unlikely to substantially increase the costs of compliance above what will be involved with the new federal sorting requirements. Rougheye Rockfish, Blackspotted Rockfish, and Shortraker Rockfish are present in 78 percent of hook and line landings of Slope Rockfish and 33 percent of trawl landings. When present, they make up 78 percent of Slope Rockfish landings on average for hook and line gears and 67 percent for trawl landings when present. This suggests that the new federal requirement will require increased handling of what are now Slope Rockfish landings, especially for hook and line vessels.

No economic surveys on the costs associate with the sorting of rockfish species are available. In addition to the increased handling time, fishing crews and buying operations may have to alter their workspaces to handle and track the additional species and species categories. However, these impacts may occur regardless of whether the Department adopts these proposed changes due to the pending federal regulatory changes. Additionally, the Department anticipates increased costs from additional sorting requirements (whether federal or State) will be minimal in general as Slope Rockfish landings are a small percentage of the fish handled on a typical landing in terms of the total volume received. From 2011 to 2013, Slope Rockfish landings, on average, accounted for only 1.1 percent of bottom trawl landings, 0.2 percent of midwater trawl landings, and 4.7 percent of fixed gear (hook and line and pot) landings. The Department encourages comment from affected fishing vessel and fish buying/processing operations on potential cost impacts and will strongly consider adverse effects to costs when deciding whether to implement the proposed requirements.

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

The proposed requirements will not affect the marketability of Slope Rockfish, thus the Department does not expect the changes to lead to any losses in sales or revenues. It is possible

that fishing vessel operators may choose to land their Slope Rockfish into Oregon or California instead of Washington if the sorting requirements are viewed as too burdensome. If so, this would affect the revenues of Washington fish buyers. Likewise, more restrictive sorting requirements may affect the decisions of existing fish buyers to move to or new buyers to start up in another state. The Department assumes that the additional costs associated with sorting are minor relative to the other costs and revenues associated with running or choosing to start seafood buying or processing businesses.

Again, without economic data available, the Department strongly encourages feedback and comments from commercial fishers and fish buyers on how sales or revenues might be affected by these potential changes. As with costs, the Department will strongly consider any adverse effects on sales or revenues in deciding whether to implement the proposed requirements.

5. 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.**

As discussed above, the added costs of complying with the proposed changes over and above the cost of compliance with the new federal sorting requirements are difficult to identify but are not expected to be substantial. Since 2011, the top 10 percent of businesses receiving Slope Rockfish consists of three fish processors. The average Slope Rockfish received by these buyers is 17 metric tons per year over 2011 to 2013. This equates to an average of 1 percent of all commercial fish received by this business and roughly 4 percent of all groundfish species. The Department therefore expects the proposed requirements to affect a small portion of the overall product flow of these businesses, especially considering that the pending federal sorting requirements will already cause these businesses to spend more time handling landings of Rougheye Rockfish and Shortraker Rockfish.

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

The Department has supported past implementations of new sorting requirements with education and outreach on how to correctly identify and sort species and will undertake them again for the new federal sorting requirements and the additional sorting requirements proposed here if implemented. This support should result in easier species identification and thereby reduce some costs to affected small businesses.

Since the impending federal regulatory changes will already increase sorting requirements, and the costs associated with the additional requirements contemplated in this proposal are marginal in addition to the new federal requirements, there are no other steps the agency could take to accomplish the potential rule changes at a reduced cost.

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

The PFMC is a public process in which the Department actively participates and that allows for significant participation by small businesses and the public through written comment, participation on advisory bodies, and providing spoken testimony. The issue of Slope Rockfish sorting has been addressed at the PFMC multiple times over the past few years and the Department has received some feedback through that process. For this rulemaking, the Department will reach out to the affected business and consider all written and verbal comments (as required by Chapter 34.05 RCW) before deciding to implement the requirements. Over the past three years, 99 percent of the Slope Rockfish landings were received by 10 businesses. This small number will facilitate the Department in its efforts to work directly with the most affected business for their input.

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

As highlighted above, the proposed requirements would affect commercial fishers delivering and initial purchasers or receivers of the Slope Rockfish species managed under the PFMC Pacific Coast Groundfish Fishery Management Plan and related regulations. These regulations currently define the following as Slope Rockfish:

Aurora Rockfish (<i>Sebastes aurora</i>)	Rougheye Rockfish (<i>Sebastes aleutianus</i>)
Bank Rockfish (<i>Sebastes rufus</i>)	Sharpchin Rockfish (<i>Sebastes zacentrus</i>)
Blackgill Rockfish (<i>Sebastes melanostomus</i>)	Shortraker Rockfish (<i>Sebastes borealis</i>)
Blackspotted Rockfish (<i>Sebastes melanostictus</i>)	Splitnose Rockfish (<i>Sebastes diploproa</i>)
Redbanded Rockfish (<i>Sebastes babcocki</i>)	Yellowmouth Rockfish (<i>Sebastes reedi</i>)

As mentioned above, the proposed change would be expected to affect three main fishing vessel types: bottom trawl, midwater trawl vessels targeting Pacific Whiting, and fixed gear “hook and line” vessels fishing primarily for Sablefish. The commercial fishers and fish buyers delivering and receiving Slope Rockfish since 2011 operate mainly out of the Columbia River ports of Ilwaco and Chinook, Westport, Neah Bay, and Bellingham.

WAC 220-69-230 Description of Washington state nontreaty fish receiving tickets. (1) The department creates, prepares, prints, and distributes upon request the following nontreaty fish receiving ticket forms:

- (a) Puget Sound salmon;
 - (b) Troll;
 - (c) Marine;
 - (d) Utility; and
 - (e) Shellfish.
- (2) Fish receiving ticket forms must contain space for the following information:
- (a) Fisherman: The name of the licensed deliverer.
 - (b) Address: The address of the licensed deliverer.
 - (c) Boat name: The name or Coast Guard number of the landing vessel.
 - (d) WDFW boat registration: The Washington department of fish and wildlife boat registration number.
 - (e) Gear: The code number or name of the specific type of gear used.
 - (f) Fisherman's signature: The signature of the licensed deliverer.
 - (g) Date: Date of landing.
 - (h) Dealer: Name of dealer and the department number assigned to dealer.
 - (i) Buyer: The name of buyer and the department number assigned to buyer.
 - (j) Receiver's signature: The signature of the original receiver.
 - (k) Number of days fished: Days spent catching fish.
 - (l) Fish or shellfish caught inside or outside 3-mile limit: Check one box.
 - (m) Catch area:
 - (i) The salmon catch area code if salmon are caught.
 - (ii) The marine fish/shellfish catch area code if marine fish are caught or shellfish are caught or harvested.
 - (n) Tally space for dealer's use: Used at the dealer's discretion.
 - (o) Species code: The department assigned species code.
 - (p) Individual number of salmon and sturgeon.
 - (q) Individual numbers of other fish species if fish other than salmon or sturgeon are landed as part of an incidental catch allowance or catch ratio restriction.
 - (r) The number of ghost shrimp in dozens, the number of oysters in dozens or gallons, and the species description for all fish and shellfish.
 - (s) The original total weight in round pounds of all shellfish or fish, except that pounds of legally dressed fish and shellfish may be recorded in original dressed weight so long as dressed fish and shellfish are designated as dressed on the fish receiving ticket.
 - (t) Value of fish and shellfish sold or purchased: Summary information for species, or species groups landed.
 - (u) All species or categories of bottomfish having (~~a vessel trip limit~~) federal or state harvest specifications, sorting require-

ments, or vessel trip limits must be listed separately (see WAC 220-44-050).

(v) Work area for dealer's use: Used at dealer's discretion, except:

(i) Federal sablefish endorsed limited entry permit numbers for each delivery of sablefish landed under the authority of the permit must be recorded on the fish receiving ticket in the space reserved for dealer's use. Separate fish tickets are required for each permit number used.

(ii) At the time of landing of coastal bottomfish into a Washington port, the fish buyer receiving the fish must clearly record all legally defined trawl gear aboard the vessel at the time of delivery of the bottomfish on the fish receiving ticket in the space reserved for dealer's use. The 3 trawl gear types are: Midwater trawl, roller trawl, and small foot rope trawl (foot rope less than 8 inches in diameter). The gear type(s) aboard the vessel must be recorded on the fish receiving ticket before the vessel representative signs the fish receiving ticket.

(w) Total amount: Total value of landing.

(x) Take-home fish: Species, number, and pounds of fish or shellfish retained for personal use.

(y) Crew: The name and signature of crew members who take home fish for personal use.

(3) A Puget Sound salmon fish receiving ticket must be completely, accurately, and legibly prepared for:

(a) Deliveries of nontreaty salmon caught in inland waters; and

(b) Any imports of fresh salmon into the state of Washington.

(4) A troll fish receiving ticket must be completely, accurately, and legibly prepared for:

(a) Deliveries of nontreaty coastal salmon and incidental catch;

(b) Any imports of fresh salmon into the state of Washington; and

(c) Any bottomfish or halibut subject to a catch allowance or ratio restriction, when those species are taken incidental to salmon fishing.

(5) A marine fish receiving ticket must be completely, accurately, and legibly prepared for:

(a) Nontreaty deliveries of marine fish or bottomfish that do not include salmon; and

(b) Any imports of fresh marine fish or bottomfish.

(6) A marine or utility fish receiving ticket must be completely, accurately, and legibly prepared for:

(a) Any nontreaty deliveries that do not include salmon, where other fish receiving tickets are not appropriate; and

(b) Any imports of fresh fish or shellfish that do not include salmon.

(7) A shellfish receiving ticket must be completely, accurately, and legibly prepared for:

(a) Any nontreaty deliveries of shellfish;

(b) Any imports of fresh shellfish; and

(c) Any incidental catch of bottomfish made while fishing for shellfish. The species name, total pounds, and price per pounds must be entered for each species of bottomfish caught.

WAC 220-44-050 Coastal bottomfish catch limits. (1)(a) It is unlawful to possess, transport through the waters of the state, or land in any Washington state port, bottomfish taken in excess of the amounts or less than the minimum or maximum sizes, or in violation of any of the possession, landing, or sorting requirements published in the Code of Federal Regulations (C.F.R.), Title 50, Part 660, Subpart G. These federal regulations provide the requirements for commercial groundfish fishing in the Pacific Ocean. Additional regulations may be enacted and listed in the Federal Register, and these regulations override those in the C.F.R. if there are any inconsistencies between the two. Therefore, persons must consult these federal regulations, which chapter 220-44 WAC incorporates by reference and is based on, in part. Where rules refer to the fishery management area, that area is extended to include Washington state waters coterminous with the Exclusive Economic Zone. A copy of the federal rules may be obtained by contacting (~~Lori Preuss at 360 902 2930~~) the west coast region of the National Marine Fisheries Service at 206-526-6140, or the internet at (~~www.pcouncil.org~~) www.westcoast.fisheries.noaa.gov/fisheries/groundfish/index.html. State regulations may apply that are more restrictive than federal regulations.

(b) Landings of any Slope Rockfish species as defined in the Code of Federal Regulations (C.F.R.), Title 50, Part 660, Subpart G, must be reported at the species level except that Blackspotted Rockfish (*Sebastes melanostictus*) must be reported together with Rougheye Rockfish (*Sebastes aleutianus*) in a "Rougheye/Blackspotted" category.

(c) A violation of this subsection is a gross misdemeanor, punishable under RCW 77.15.550.

(2)(a) It is unlawful to possess, transport through the waters of the state, or land into any Washington port, walleye pollock taken with trawl gear from Marine Fish-Shellfish Management and Catch Reporting Areas 58B, 59A-1, 59A-2, 59B, 60A-1, 60A-2, 61, 62, or 63, except by trawl vessels participating in the directed Pacific whiting fishery and the directed coastal groundfish fishery.

(b) A violation of this section is a gross misdemeanor, punishable under RCW 77.15.550.

(3)(a) It is unlawful for trawl vessels participating in the directed Pacific whiting and/or the directed coastal groundfish fishery to land incidental catches of walleye pollock greater than forty percent of their total landing by weight, not to exceed ten thousand pounds.

(b) A violation of this subsection is a gross misdemeanor, punishable under RCW 77.15.550.

(4)(a) It is unlawful for an original receiver to receive whiting and whiting by-catch under the authority of an exempted fishing permit (EFP) issued by NMFS through the department, unless the original receiver has entered into a signed agreement with the department specifying the responsibilities of the original receiver in conjunction with the whiting EFP fishery. Failure to comply with the terms of the agreement shall be cause to remove the original receiver from the list of original receivers allowed to receive unsorted whiting catches from EFP vessels.

(b) A violation of this subsection is a gross misdemeanor, punishable under RCW 77.15.550.

(5)(a) It is unlawful to land thresher shark taken by any means from state and offshore waters of the Pacific Ocean north of the Washington-Oregon boundary and south of the United States-Canada boundary. It is unlawful to land thresher shark taken south of the Washington-Oregon boundary unless each thresher shark landed is accompanied by a minimum of two swordfish.

(b) A violation of this subsection is a gross misdemeanor, punishable under RCW 77.15.550.

(6)(a) It is unlawful to take salmon incidental to any lawful bottomfish fishery.

(b) A violation of this subsection is a gross misdemeanor, punishable under RCW 77.15.550.

(7)(a) It is unlawful to retain sturgeon species, other than white sturgeon, taken incidental to any lawful bottomfish fishery. White sturgeon may be taken as long as the fisher complies with minimum and maximum size restrictions for commercial fisheries.

(b) A violation of this subsection is a gross misdemeanor, punishable under RCW 77.15.550.

(8)(a) It is unlawful to retain any species of shellfish taken incidental to any lawful bottomfish fishery, except that it is lawful to retain octopus and squid.

(b) A violation of this subsection is a gross misdemeanor, punishable under RCW 77.15.550.