



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 15-22-097 on 11/3/15; 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: (Describe Subject) Coastal mackerel purse seine fishery. The Washington Department of Fish and Wildlife is proposing to designate a commercial trial emerging commercial fishery for the directed harvest of Pacific mackerel with purse seine gear. To accomplish this, the Department is proposing a new Chapter, Chapter 220-88F WAC, which includes the following new rules: WAC 220-88F-010, 220-88F-020, and 220-88F-030.

Hearing location(s):

WDFW Region 6 Office
 48 Devonshire Road
 Montesano, WA 98563

Date: February 11, 2016 Time: 10:00 a.m.

Submit written comments to:

Name: Lorna Wargo
 Address: 48 Devonshire Road
 Montesano, WA 98563
 e-mail Lorna.Wargo@dfw.wa.gov
 fax (360) 249-1229 by (date) February 5, 2016

Assistance for persons with disabilities: Contact

Tami Lininger by February 5, 2016

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

Date of intended adoption: On or after February 11, 2016

(Note: This is NOT the effective date)

Purpose of the proposal and its anticipated effects, including any changes in existing rules: The purpose of this proposal is to designate and provide regulations for a trial emerging commercial fishery for the commercial harvest of Pacific mackerel with purse seine gear. This proposal also anticipates advancement of the trial emerging fishery to an experimental emerging fishery. The effect of this rule is to establish a commercial fishery in federal waters for the harvest of Pacific mackerel with purse seine gear.

Reasons supporting proposal: The National Marine Fisheries Service, in coordination with the Pacific Fishery Management Council, regulates and scientifically assesses Pacific mackerel fisheries in offshore waters. No Washington fishery license authorizes landing Pacific mackerel from a directed Pacific mackerel purse seine fishery. Lacking such a license and regulations specific to this species and gear, Washington fishers are precluded from participating in the federal directed mackerel fishery when harvest opportunity exists.

Statutory authority for adoption: RCW 77.04.012, 77.04.013, 77.04.055, 77.12.045, 77.12.047, 77.65.400, 77.70.160, and 77.70.180

Statute being implemented: RCW 77.04.012, 77.04.013, 77.04.055, 77.12.045, 77.12.047, 77.65.400, 77.70.160, and 77.70.180

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: January 06, 2016

TIME: 10:33 AM

WSR 16-02-116

DATE

January 6, 2016

NAME (type or print)

Joanna Eide

SIGNATURE

TITLE

Rules Coordinator

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 98563 | (360) 249-1221 |
| Implementation.... Lorna Wargo | 48 Devonshire Road, Montesano, WA 98563 | (360) 249-1221 |
| Enforcement..... Steve Crown | 1111 Washington Street SE, Olympia, WA 98501 | (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: Lorna Wargo
Address: 48 Devonshire Road
Montesano, WA 98563

phone (360) 249-1221
fax (360)249-1229
e-mail Lorna.Wargo@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
Directed Mackerel Purse Seine
Emerging Commercial Fishery

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

The proposed rule requires fishers to maintain and submit a logbook documenting fishing operations in a directed fishery for Pacific mackerel including but not limited to fishing dates and landing date, fishing location (latitude and longitude), and pounds of fish retained.

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

Compliance with the proposed rule will not require professional services.

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

The rule proposes opening a new, directed fishery for Pacific mackerel under provisions of the Emerging Commercial Fishery Act. The primary function of the emerging commercial fishery process is to collect data in support of marine resource conservation and sustainable fishery management. One component of this data collection is the fishery logbook.

A logbook will be provided at no cost to license holders. Fishers will incur the costs associated with maintaining the logbook and mailing it to the department on a monthly basis. It is a typical practice for commercial fishers to maintain a log of fishing activity voluntarily for their own purposes. Therefore, a mandatory logbook tends to supplant the voluntary record keeping. In these cases, the only additional cost is for postage. Postage is not likely to exceed five dollars per month; annual costs vary with season length or the number of months a fisher is participating in the fishery.

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

No, compliance will have no effect on sales or revenue.

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

Cost of compliance will be insignificant and limited to the expense of postage to submit logbooks to the agency. This cost can be avoided or mitigated by submitting logbooks in person to agency staff. Typically this can occur when agency employees are present to conduct biological inspections of the catch.

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

The agency provides printed logbooks.

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

WDFW held a public meeting in June 2015 with Pacific sardine purse seine commercial license holders and processors, and briefed the Fish and Wildlife Commission in August 2015 to propose the opening of a new directed fishery for Pacific mackerel. A hearing will be held to review the rules as part of the rule-making process. The proposed rules for the mackerel fishery are based on fishery regulations for Pacific sardine that were subject to review and comment by fishery businesses during their development.

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

Holders of an emerging commercial fishery license and a Pacific mackerel purse seine permit will be required to comply with the rule.

Chapter 220-88F WAC
COASTAL DIRECTED MACKEREL PURSE SEINE FISHERY

NEW SECTION

WAC 220-88F-010 Designation of the coastal Pacific mackerel purse seine fishery as an emerging commercial fishery. (1) The director designates the coastal Pacific mackerel purse seine fishery as an emerging commercial fishery for which use of a vessel is required. It is unlawful to fish for, possess, or deliver Pacific mackerel taken for commercial purposes from Washington territorial waters west of the Bonilla-Tatoosh line or from waters of the Exclusive Economic Zone unless the fisher has a valid emerging commercial fishery license and a valid coastal Pacific mackerel purse seine trial or experimental fishery permit.

(2) The following licenses may not be used to fish for, possess, or deliver Pacific mackerel taken in Washington territorial waters west of the Bonilla-Tatoosh line or waters of the Exclusive Economic Zone: Shrimp trawl - Non-Puget Sound fishery license, ocean pink shrimp delivery license, coastal spot shrimp pot fishery license, nonlimited entry delivery license, salmon troll delivery license, salmon delivery license, crab pot fishery license, Dungeness crab - Coastal fishery license.

NEW SECTION

WAC 220-88F-020 Emerging commercial fishery—Eligibility for coastal Pacific mackerel purse seine experimental fishery permits—Terms and conditions of use—Renewal—Vessel restriction. (1) No individual may hold more than one Washington coastal Pacific mackerel purse seine trial or experimental fishery permit.

(2) Coastal Pacific mackerel fishery permits are not transferable. Only the vessel designated on the emerging commercial fishery license and Pacific mackerel fishery permit may be used to fish for or deliver Pacific mackerel in the directed Pacific mackerel fishery.

(3) Coastal Pacific mackerel fishery permits may be revoked by the director, and future permits denied by the director, for failure to comply with conditions specified in the permits or violations of other fishing regulations. A coastal Pacific mackerel fishery permit will not be renewed if the emerging commercial fishery license is revoked or future fishing privileges of the licensee are suspended.

(4) Coastal Pacific mackerel fishery permits are only valid for the year issued and expire on December 31st of the year issued.

NEW SECTION

WAC 220-88F-030 Coastal Pacific mackerel purse seine fishery—Harvest, landing, and reporting requirements—Gear. (1) Licensing, harvest, and reporting requirements. It is unlawful for persons fishing under a Washington trial or experimental Pacific mackerel purse seine fishery permit to fail to:

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

(b) Surrender up to five hundred Pacific mackerel 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 mackerel or other coastal pelagic species taken in violation of rules published in Title 50, Part 660, Subpart I of the Code of Federal Regulations (C.F.R.) including, but not limited to: Annual specifications, closure of directed fishery, catch restrictions, gear requirements. 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. state regulations that are more restrictive than the federal regulations will prevail.

(b) It is unlawful to fish for or possess Pacific mackerel taken with any gear other than purse seine gear, except Pacific mackerel taken incidentally in fisheries authorized by federal rule, from offshore waters except during the directed sardine fishery season or the directed Pacific mackerel fishery season open each year from April 1st through December 31st.

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

(d) It is unlawful to retain any species that is taken incidental to Pacific mackerel, except for other mackerel species, jack mackerel, sardine, anchovy, and market squid (*Logligo opalescens*). It is unlawful to retain, possess or deliver, anchovy in excess of 5 metric tons in one day, and in excess of 10 metric tons during any calendar week beginning 12:01 a.m. Sunday through 11:59 p.m. Saturday.

(e) It is unlawful to fail to release any salmon encircled in the purse seine prior to completion of the set or to land or retain salmon on the fishing vessel.

(f) It is unlawful to transfer Pacific mackerel catch from one fishing vessel to another.

(3) Landing and delivery.

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

(b) It is unlawful to fail to deliver Pacific mackerel landings to a processing facility located on shore.

(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 in total more than fifteen percent cumulative weight of Pacific mackerel for the purposes of conversion into fish flour, fish meal, fish scrap, fertilizer, fish oil, other fishery products, or by-products, or for purposes other than human consumption, or fishing bait taken during the directed Pacific mackerel and/or directed sardine fishery season(s).

(4) A violation of the reporting requirements provided in this section is punishable under RCW 77.15.630 Unlawful fish and shellfish catch accounting—Penalty.

(5) A violation of the gear 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 or landing requirements provided in this section is punishable under RCW 77.15.550 Violation of a commercial fishing area or time—Penalty.