



PROPOSED RULE MAKING

CR-102 (October 2017) (Implements RCW 34.05.320)

Do NOT use for expedited rule making

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STATE OF WASHINGTON
FILED

DATE: December 18, 2017

TIME: 1:01 PM

WSR 18-01-093

Agency: Department of Fish and Wildlife (WDFW)

Original Notice

Supplemental Notice to WSR _____

Continuance of WSR _____

Preproposal Statement of Inquiry was filed as WSR 17-21-053 filed on October 13, 2017 ; 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); or

Proposal is exempt under RCW _____.

Title of rule and other identifying information: (describe subject) The department is amending WAC 220-340-500 as it relates to the requirement to maintain footrope lighting devices on shrimp nets as recommended by the federal National Marine Fisheries Service Eulachon Recovery Plan.

Hearing location(s):

Date:	Time:	Location: (be specific)	Comment:
February 9-10, 2018	8:00 a.m.	Natural Resources Building Room 172 1111 Washington Street SE Olympia, WA 98501	

Date of intended adoption: March 17, 2018 (Note: This is NOT the effective date)

Submit written comments to:

Name: Scott Bird, WDFW Rules Coordinator
Address: 600 Capitol Way N. Olympia, WA 98501-1091
Email: Rules.Coordinator@dfw.wa.gov
Fax: (360) 902-2155
Other:
By (date) February 1, 2018

Assistance for persons with disabilities:

Contact Delores Noyes
Phone: (360) 902-2349
Fax:
TTY: (360) 902-2207
Email: Delores.Noyes@dfw.wa.gov
Other:
By (date) January 30, 2018

Purpose of the proposal and its anticipated effects, including any changes in existing rules: The department is amending its rules based on the formal recommendations of the federal National Marine Fisheries Service Eulachon Recovery Plan in order to reduce the bycatch of eulachon smelt which is listed under ESA as a threatened species.

Reasons supporting proposal: The reason is based on the recommendation of the federal National Marine Fisheries Service Eulachon Recovery Plan.

Statutory authority for adoption: RCW 77.04.012, 77.04.013, 77.04.055, and 77.12.047

Statute being implemented: None

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:

Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters: None.

Name of proponent: (person or organization) Washington State Department of Fishing and Wildlife (WDFW) 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:	Dan Ayres	48 Devonshire Road Montesano, WA 98563	360-249-4628
Enforcement:	Chief Steve Bear	1111 Washington Street, Olympia, WA 98501	360-902-2373

Is a school district fiscal impact statement required under RCW 28A.305.135? Yes No

If yes, insert statement here:

The public may obtain a copy of the school district fiscal impact statement by contacting:

Name:
Address:
Phone:
Fax:
TTY:
Email:
Other:

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:
TTY:
Email:
Other:

No: Please explain: The proposed rule changes do not affect hydraulics.

Regulatory Fairness Act Cost Considerations for a Small Business Economic Impact Statement:

This rule proposal, or portions of the proposal, **may be exempt** from requirements of the Regulatory Fairness Act (see chapter 19.85 RCW). Please check the box for any applicable exemption(s):

This rule proposal, or portions of the proposal, is exempt under RCW 19.85.061 because this rule making is being adopted solely to conform and/or comply with federal statute or regulations. Please cite the specific federal statute or regulation this rule is being adopted to conform or comply with, and describe the consequences to the state if the rule is not adopted.

Citation and description:

This rule proposal, or portions of the proposal, is exempt because the agency has completed the pilot rule process defined by RCW 34.05.313 before filing the notice of this proposed rule.

This rule proposal, or portions of the proposal, is exempt under the provisions of RCW 15.65.570(2) because it was adopted by a referendum.

This rule proposal, or portions of the proposal, is exempt under RCW 19.85.025(3). Check all that apply:

RCW 34.05.310 (4)(b)
(Internal government operations)

RCW 34.05.310 (4)(e)
(Dictated by statute)

RCW 34.05.310 (4)(c)
(Incorporation by reference)

RCW 34.05.310 (4)(f)
(Set or adjust fees)

RCW 34.05.310 (4)(d)
(Correct or clarify language)

RCW 34.05.310 (4)(g)
(i) Relating to agency hearings; or (ii) process requirements for applying to an agency for a license or permit)

This rule proposal, or portions of the proposal, is exempt under RCW ____.

Explanation of exemptions, if necessary:

COMPLETE THIS SECTION ONLY IF NO EXEMPTION APPLIES

If the proposed rule is **not exempt**, does it impose more-than-minor costs (as defined by RCW 19.85.020(2)) on businesses?

No Briefly summarize the agency's analysis showing how costs were calculated. The analysis is based on the cost to individual boat owners/operators of following the rule once it is implemented. The rule requires the use of LED lights on shrimp trawl gear which individually costs approximately \$1,300 per net. Based on local revenues for the shrimp trawling industry, this is a de minimis cost to boat owners/operators during an average season.

Yes Calculations show the rule proposal likely imposes more-than-minor cost to businesses, and a small business economic impact statement is required. Insert statement here:

The public may obtain a copy of the small business economic impact statement or the detailed cost calculations by contacting:

- Name:
- Address:
- Phone:
- Fax:
- TTY:
- Email:
- Other:

Date: December 18, 2017

Name: Scott Bird

Title: Rules Coordinator

Signature:



WAC 220-340-500 Commercial ocean pink shrimp trawl fishery—Coastal waters. It is unlawful to fish for, possess or deliver ocean pink shrimp taken for commercial purposes from the waters of the Exclusive Economic Zone, except as provided for in this section:

Area

(1) It is unlawful to fish for ocean pink shrimp within the territorial boundaries of the state. A violation of this subsection is punishable under RCW 77.15.550, Violation of commercial fishing area or time—Penalty.

Season

(2) It is unlawful to fish for, take, or possess on board a fishing vessel, pink shrimp, except during the following time: The open season for trawl gear is April 1 through October 31 of each year. A violation of this subsection is punishable under RCW 77.15.550, Violation of commercial fishing area or time—Penalty.

Gear

(3) It is unlawful to fish with trawl gear for pink shrimp for commercial purposes unless an approved by-catch reduction device is used in each net. A by-catch reduction device, also known as a finfish excluder, uses a rigid panel or grate of narrowly spaced bars to guide fish out of an escape hole forward of the panel, generally in the top of the net. An approved by-catch reduction device must meet the following criteria:

(a) The exterior circumference of the rigid panel must fit completely within the interior circumference of the trawl net;

(b) None of the openings between the bars in the rigid panel may exceed 0.75 inches;

(c) The escape hole must, when spread open, expose a hole of at least 100 square inches; and

(d) The escape hole must be forward of the rigid panel and must begin within four meshes of the furthest aft point of attachment of the rigid panel to the net.

(4) It is unlawful to modify by-catch reduction devices in any way that interferes with their ability to allow fish to escape from the trawl, except as provided by special gear permit as described in subsection (5) of this section.

(5) Testing of by-catch reduction devices is allowed by special gear permit only, consistent with the terms and conditions of the permit.

(6) It is unlawful to remove trawl gear from the vessel prior to offloading shrimp without advance notification to WDFW enforcement. To provide advance notification, contact 360-902-2936, and then press zero when the recording begins.

(7) It is unlawful to fish with trawl gear for pink shrimp for commercial purposes unless footrope lighting devices that have been approved by the department are used in each net. A list of approved footrope lighting devices is available from the department. Footrope lighting devices must meet the following criteria:

(a) Lighting devices must be operational;

(b) Lighting devices must be securely attached within six inches of the forward leading edge of the bottom panel of trawl netting; and

(c) Each trawl net must have a minimum of five lighting devices, spaced four feet apart in the central sixteen feet of each net.

(8) It is unlawful to modify footrope lighting devices or device placement on the footrope in any way inconsistent with subsection (7)(c) of this section, except as provided by special gear permit as described in subsection (9) of this section.

(9) Testing of footrope lighting devices or placement on the footrope is allowed by special gear permit only, consistent with the terms and conditions of the permit.

(10) A violation of subsections (3) through (6) of this section is punishable under RCW 77.15.520, Commercial fishing—Unlawful gear or methods—Penalty.

~~((8))~~ (11) It is unlawful to land or deliver pink shrimp to an original receiver that exceeds the following count per pound restriction: The count per pound must average no more than 160 shrimp per pound for a minimum of two samples, increasing at a rate of one sample per one thousand pounds landed or in possession, up to a maximum requirement of twenty samples. Such samples shall consist of at least one pound each of whole, unbroken shrimp taken at random throughout the individual load landed or in possession. This landing restriction shall apply only to loads of 3,000 pounds of shrimp or more. A violation of this subsection is punishable under RCW 77.15.550, Violation of commercial fishing area or time—Penalty.

Incidental catch

~~((9))~~ (12) It is unlawful to take salmon incidental to any shrimp trawl fishery.

~~((10))~~ (13) It is unlawful to retain any bottomfish species taken incidental to any shrimp trawl fishery, except as provided for in WAC 220-355-100.

~~((11))~~ (14) It is unlawful to retain any species of shellfish, except that it is permissible to:

(a) Retain up to 50 pounds round weight of other shrimp species taken incidentally in the ocean pink shrimp fishery; and

(b) Retain octopus or squid.

~~((12))~~ (15) A violation of subsections ~~((9) through (11))~~ (12) through (14) of this section is punishable under RCW 77.15.550, Violation of commercial fishing area or time—Penalty.

License

~~((13))~~ (16) An ocean pink shrimp delivery license is required to operate the gear provided for in this section, and it allows the operator to retain shrimp taken in the waters of the Exclusive Economic Zone.

A violation of this subsection is punishable under RCW 77.15.500, Commercial fishing without a license—Penalty.

Permit

~~((14))~~ (17) It is unlawful to fish for, retain, land, or deliver shrimp taken with trawl gear without a valid shrimp trawl fishery permit.

~~((15))~~ (18) It is unlawful to take, retain, land, or deliver any shrimp or groundfish taken with trawl gear without complying with all provisions of a shrimp trawl fishery permit.

~~((16))~~ (19) A violation of subsection ~~((14) or (15))~~ (17) or (18) of this section is punishable under RCW 77.15.750.