



PROPOSED RULE MAKING

CR-102 (July 2022) (Implements RCW 34.05.320) Do NOT use for expedited rule making

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STATE OF WASHINGTON
FILED

DATE: January 31, 2023
TIME: 2:57 PM

WSR 23-04-094

Agency: Washington Department of Fish and Wildlife (P2022-19)

- Original Notice**
- Supplemental Notice to WSR** _____
- Continuance of WSR** _____

- Preproposal Statement of Inquiry was filed as WSR 22-24-112 ; 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) Commercial Fixed Gear Rockfish Landings Condition – The department is considering amending WAC 220-353-050 to add certain bottomfish (also known as “groundfish”) to the list of commercially taken species that are permitted to be possessed, transported through the waters of the state, and landed in dressed condition.

Hearing location(s):

Date:	Time:	Location: (be specific)	Comment:
March 14, 2023	9:00 AM	Zoom webinar https://us02web.zoom.us/j/911111111111	Register in advance for this meeting: https://us02web.zoom.us/j/911111111111 After registering, you will receive a confirmation email containing information about joining the meeting.

Date of intended adoption: No sooner than March 14, 2023 (Note: This is **NOT** the **effective** date)

Submit written comments to:

Name: Whitney Roberts
 Address: 1111 Washington St. SE, Olympia, WA 98501
 Email: commercial-rockfish@PublicInput.com
 Fax:
 Other: Phone for voicemail comments: 855-925-2801 project code: 2303
 Website: <https://publicinput.com/commercial-rockfish>
 By (date) March 10, 2023

Assistance for persons with disabilities:

Contact Title VI/ADA Compliance Coordinator
 Phone: (360) 902-2349
 Fax:
 TTY: 1-800-833-6388 OR 711
 Email: Title6@dfw.wa.gov
 Other:
 By (date) March 10, 2023

Purpose of the proposal and its anticipated effects, including any changes in existing rules: The purpose of this rule change is to allow commercial landings of dressed rockfish for vessels that obtain a director’s permit to do so. To ensure accurate data collection for stock assessments, fish are currently required to be landed into Washington ports in the whole (also known as “round”) condition, unless specifically exempted in regulation. This rule would expand the list of exempted species/species groups to include rockfishes, again as authorized by permit of the director.

Reasons supporting proposal: Some commercial fishers in the fixed gear sablefish fishery, as well as the salmon troll fishery, have requested that additional species, such as rockfishes, be exempted from the existing rule because dressing them at sea would preserve their marketability and reduce discarding early in the trip due to spoilage. The average trip in the largest portion of the fixed gear sablefish fishery lasts 7-8 days. Therefore, some first receivers (or “buyers”) are refusing rockfish deliveries unless the rockfish was caught within the last few days of the trip, and some fishers are therefore discarding or are unable to market a portion of their incidentally caught rockfish. Even for the rockfish that vessels are able to sell, a dressed/gutted fish may get a higher price. Additionally, the department has received support letters about growing

interest in selling dressed rockfish at direct-to-consumer markets, and allowing dressing of rockfish at sea may better serve this type of market. Rockfish are an important contribution to overall revenue, and this rule change would allow more fishers to sell a larger percentage of their catch. Buyers have also commented that, with this rule change, they expect to be able to re-sell more of the rockfish they receive from fishers. Overall, this rule change would be expected to reduce waste by reducing discards. The permits, which will be issued at the discretion of the director, will include terms and conditions designed to ensure that the department maintains the ability to adequately sample rockfish for stock assessments.

Statutory authority for adoption: RCW 77.04.012, 77.04.013, 77.04.020, 77.12.045, 77.04.055, and 77.12.047

Statute being implemented: None

Is rule necessary because of a:

- Federal Law? Yes No
Federal Court Decision? Yes No
State Court Decision? Yes No

If yes, CITATION:

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

Type of proponent: Private Public Governmental

Name of proponent: (person or organization) Washington Department of Fish and Wildlife

Name of agency personnel responsible for:

	Name	Office Location	Phone
Drafting:	Whitney Roberts	1111 Washington St. SE, Olympia, WA 98501	360-902-2675
Implementation:	Kelly Cunningham	1111 Washington St. SE, Olympia, WA 98501	360-902-2325
Enforcement:	Chief Steve Bear	1111 Washington St. SE, Olympia, WA 98501	360-902-2938

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: This proposal does not require a cost benefit analysis under RCW 34.05.328.

Regulatory Fairness Act and Small Business Economic Impact Statement

Note: The [Governor's Office for Regulatory Innovation and Assistance \(ORIA\)](#) provides support in completing this part.

(1) Identification of exemptions:

This rule proposal, or portions of the proposal, **may be exempt** from requirements of the Regulatory Fairness Act (see [chapter 19.85 RCW](#)). For additional information on exemptions, consult the [exemption guide published by ORIA](#). 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 19.85.025\(4\)](#) (does not affect small businesses).

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

Explanation of how the above exemption(s) applies to the proposed rule: .

(2) Scope of exemptions: *Check one.*

The rule proposal is fully exempt (*skip section 3*). Exemptions identified above apply to all portions of the rule proposal.

The rule proposal is partially exempt (*complete section 3*). The exemptions identified above apply to portions of the rule proposal, but less than the entire rule proposal. Provide details here (consider using [this template from ORIA](#)):

The rule proposal is not exempt (*complete section 3*). No exemptions were identified above.

(3) Small business economic impact statement: *Complete this section if any portion is not exempt.*

If any portion of 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 minor cost analysis and how the agency determined the proposed rule did not impose more-than-minor costs. The fishing businesses that would be affected by this proposed rule all qualify as small businesses under the Regulatory Fairness Act. The proposed change would reduce existing substantive regulatory requirements through a voluntary, permit based program. Businesses would be expected to participate only if the opportunity to earn additional revenues from the improved quality of dressing fish at sea outweigh the costs of participating.

The department expects any additional costs of participation to be minor. Permits will be provided at no cost to applicants. New costs would arise only from the time needed to apply for the permit and to comply with permit terms and conditions, including training. Permit terms and conditions will not add reporting or recordkeeping requirements beyond those already required. Likewise, the time needed to interact with the department would be minimal compared to the time businesses already spend applying for fishery licenses and interacting with department port biologists. Neither the application process nor compliance would be expected to reduce time available for fishing.

The department collects information on revenues earned by fishing businesses delivering fish into the state ("exvessel revenues") and has access to the equivalent information collected by our counterparts in Oregon and California. The set of businesses that would participate is unknown. Revenues vary widely among fishery sectors and individual businesses. The request to land dressed rockfish originated from participants in the primary fixed gear sablefish fishery. Businesses that participated in that fishery in 2021 earned, on average, exvessel revenues of \$309,042. The 0.3% minor cost threshold corresponding to this amount is \$927. As a measure of business earning lower than the 2021 West Coast average, the minor cost threshold associated with the 20th percentile revenue value was \$259. Considering West Coast revenues solely understates revenues because many businesses also fish in the Alaska sablefish and halibut fishery. The department does not have the same access to Alaska landings information. However, publicly available data shows that the average per exvessel revenue earnings from that fishery were \$289,570 in 2021 (source: Pacific States Marine Fisheries Commission Alaska Fisheries Information Network).

Individuals from the salmon troll fishery sector have also expressed interest in participating in the proposed program. Many trollers choose to not land groundfish because of the added cost of federal vessel monitoring regulations. Only 14

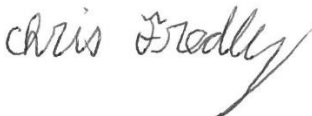
landed groundfish in 2021. The minor cost threshold for those vessels, based on the average West Coast exvessel revenues, was \$341. The 20th percentile value was \$109.

Finally, although the department has concluded that the costs of participating in the voluntary program will be minor, we will nonetheless work with participants to ensure that permit terms and conditions are kept to the minimum needed to ensure accurate data collection for stock assessment and catch accounting.

Yes Calculations show the rule proposal likely imposes more-than-minor cost to businesses and a small business economic impact statement is required. Insert the required small business economic impact 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: 1/31/2023	Signature: 
Name: Chris Fredley	
Title: Acting Agency Rules Coordinator	

WAC 220-353-050 Possession of food fish and shellfish—Identification—Commercial. (1) It is unlawful to possess any food fish or shellfish in a condition where the species, length, weight, or sex cannot be determined if a species, species group or category, length, weight, or sex limit is prescribed for that species on a vessel engaging in commercial fishing or that has commercially caught fish aboard, except:

(a) It is permissible to possess fish or shellfish legally taken for commercial purposes, landed, and properly accounted for on a completed fish receiving ticket;

(b) It is permissible to possess, transport through the waters of the state, or land dressed sablefish;

(c) It is permissible to possess, transport through the waters of the Pacific Ocean, or land dressed salmon caught during a legal commercial salmon troll fishery, provided that frozen dressed Chinook salmon are 21 1/2 inches or more in length and frozen dressed coho salmon are 12 inches or more in length, measured from the midpoint of the clavicle arch to the fork of the tail;

(d) It is permissible to possess, transport through the waters of the Pacific Ocean, or land dressed halibut if allowed by International Pacific Halibut Commission (IPHC) rules and such fish meet any IPHC size requirements so long as halibut is landed with the heads still attached; (~~and~~)

(e) It is permissible to possess, transport through the waters of the Pacific Ocean, or land dressed lingcod when taken during a lawful commercial fishery; and

(f) It is permissible to possess, transport through the waters of the Pacific Ocean, or land dressed rockfish if authorized by a permit issued by the director and in accordance with the permit's terms and conditions.

(2) Violation of this section is a gross misdemeanor under RCW 77.15.550, Violation of commercial fishing area or time—Penalty.

(3) "Dressed fish" is defined as provided in WAC 220-350-050.