

Summary Sheet

Meeting dates: March 15-17, 2018

Agenda item: Coastal Commercial Ocean Pink Shrimp LED Fishing Lights Requirement – Adoption

Presenter(s): Director Joe Stohr for Lorna Wargo, Coastal Marine Fish Science Manager and Dan Ayres, Region 6 Coastal Shellfish Manager

Background summary:

This rule proposal amends WAC 222- 340-500 to require the use of light emitting diode (LED) fishing lights on nets by vessels participating in the Washington coastal commercial ocean pink shrimp trawl fishery to mitigate bycatch of eulachon smelt which listed as a threatened species under the Endangered Species Act.

Recent research conducted by the Oregon Department of Fish and Wildlife and Pacific States Marine Fisheries Commission has demonstrated significant reduction of eulachon smelt bycatch when LED fishing lights are placed on shrimp trawl net footropes. Bycatch reduction of certain juvenile rockfish and flatfish species was also achieved.

Staff recommendation:

Adopt the rule as proposed.

Policy issue(s) and expected outcome:

Amending coastal pink shrimp fishery regulations to require the use of LED fishing lights on coastal pink shrimp trawl nets will reduce bycatch of eulachon smelt, certain juvenile rockfish species and flatfish.

Fiscal impacts of agency implementation:

The proposed LED fishing light rule will affect all 81 Washington coastal pink shrimp trawl license holders, of which only about 20 to 30 are active participants in the fishery. The estimated average equipment and supply cost for each participating vessel is \$1300 per year. Some of this expense may be offset by reduced crew labor costs due to less need to sort catch/bycatch.

Public involvement process used and what you learned:

The coastal pink shrimp program launched an annual report (“newsletter”) for shrimp industry stakeholders in 2016. Both the 2016 and 2017 editions provided information on LED fishing light research and sought comments. In addition, the coastal shellfish unit conducted a by mail and in-person survey collecting information on LED fishing light use in 2016-2017 as this proposal to require LED fishing lights in rule follows several years of voluntary use as formal research and industry-testing moved in tandem.

A public meeting was held November 29, 2017 at Westport, Washington specifically to discuss, and seek comments on the proposed LED fishing light rule. Comments received noted the lights were effective but the need was linked to higher eulachon abundance; costs were not excessive but still an addition to operating expenses; and pointed to the added inconvenience associated with installing and maintaining the lights.

Action requested and/or proposed next steps:

Adoption of the rule as proposed.

Draft motion language:

Motion: I move to adopt the LED fishing light rule as presented by staff.

Post decision communications plan:

In addition to requirements of the Administrative Procedures Act, the 2018 Washington Coastal Pink Shrimp Fishery Newsletter will announce the final decision. The rule change will also be announced through an industry stakeholder email list, and on the WDFW coastal pink shrimp web page.



PROPOSED RULE MAKING

CR-102 (October 2017)
(Implements RCW 34.05.320)
Do **NOT** use for expedited rule making

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
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:

- | | |
|---|--|
| <input type="checkbox"/> RCW 34.05.310 (4)(b)
(Internal government operations) | <input type="checkbox"/> RCW 34.05.310 (4)(e)
(Dictated by statute) |
| <input type="checkbox"/> RCW 34.05.310 (4)(c)
(Incorporation by reference) | <input type="checkbox"/> RCW 34.05.310 (4)(f)
(Set or adjust fees) |
| <input type="checkbox"/> RCW 34.05.310 (4)(d)
(Correct or clarify language) | <input type="checkbox"/> 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

Signature:

Name: Scott Bird



Title: Rules Coordinator

AMENDATORY SECTION (Amending WSR 17-05-112, filed 2/15/17, effective 3/18/17)

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 from 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.