



PROPOSED RULE MAKING

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

Do NOT use for expedited rule making

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STATE OF WASHINGTON
FILED

DATE: May 17, 2022

TIME: 7:58 PM

WSR 22-11-084

Agency: Washington Department of Fish and Wildlife (WDFW)

Original Notice

Supplemental Notice to WSR _____

Continuance of WSR _____

Preproposal Statement of Inquiry was filed as WSR 22-08-095 ; 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 proposing to amend commercial rules to require additional information when submitting an electronic fish receiving ticket while using mobile electronic catch reporting software or applications. Proposed amendments to WACs include 220-352-010 and 220-352-040.

Hearing location(s):

Date:	Time:	Location: (be specific)	Comment:
June 23-25	8:00AM	In-person at Olympia, WA and webinar/teleconference	Visit our website at https://wdfw.wa.gov/about/commission/meetings or contact the commission office at (360) 902-2267 (email commission@dfw.wa.gov) for instructions on how to join the meeting.

Date of intended adoption: On or after August 29, 2022 (Note: This is **NOT** the **effective** date)

Submit written comments to:

Name: Kelly Henderson

Address: Post Office Box 43200 Olympia, WA 98504

Email: fishticketCR102@PublicInput.com

Fax: Voicemail comments: 855-925-280, project code 2908

Other: public input webpage: <https://publicinput.com/fishticketCR102>

By (date) June 25, 2022

Assistance for persons with disabilities:

Contact Title VI/ADA Compliance Coordinator

Phone: (360) 902-2349

Fax:

TTY:

Email: Title6@dfw.wa.gov

Other: <https://wdfw.wa.gov/accessibility/requests-accommodation>

By (date) _____

Purpose of the proposal and its anticipated effects, including any changes in existing rules:

WAC 220-352-010

This proposal adds "location services" and "terms of use" to the commercial fish receiving ticket definitions.

WAC 220-352-040

The proposed rule changes would require location services on a user's mobile computing device, (specifically but not limited to smartphone or tablet) be enabled when required by the terms of use of a Department-approved mobile catch reporting software or application. Location services allows the geolocation of a user's mobile device be automatically determined when submitting an electronic fish receiving ticket.

Reasons supporting proposal: Enabling location services when required by the terms of use of a department-approved electronic catch reporting software or application so that a geolocation can be determined is a necessary tool to strengthen enforceability of deliveries when submitting an electronic fish receiving ticket. Paper fish tickets require the original receiver be present at the location and time of the purchase or delivery. When submitting an electronic fish receiving ticket using a mobile catch reporting software like the WDFW-developed WA-tix application, there is a potential loophole for users to not be physically present at the location of purchase or delivery. This could be problematic if there are requirements relative to the location where deliveries are allowed. Requiring that location services is enabled so that a geolocation can be determined when completing an electronic fish ticket when using a mobile application will address this enforcement challenge.

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

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

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

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:	Aaron Dufault	1111 Washington St. SE Olympia, WA	360-584-6195
Implementation:	Aaron Dufault	1111 Washington St. SE Olympia, WA	360-584-6195
	Heather Hall		360-490-9628
Enforcement:	Chief Steve Bear	1111 Washington St. SE Olympia, WA	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: A cost-benefit analysis is not required for this rulemaking under RCW 34.05.328(5)(a).

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 costs associated with transitioning from paper fish receiving tickets to electronic fish receiving tickets was included in previously adopted commission rule-making (WSR 21-14-001) and summarized in a Small Business Impact Statement (SBEIS). Those cost impacts were expected to be negligible for the majority of potentially impacted businesses, regardless of size. The proposed rule amendments included here are focused on the WA-Tix mobile application do not accrue any costs in addition to what is already included in the SBEIS from WSR 21-14-001.

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:

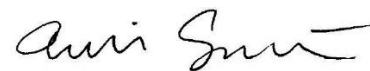
Name:
Address:
Phone:
Fax:
TTY:
Email:
Other:

Date: 5/17/2022

Name: Annie Szvetecz

Title: Agency Rules Coordinator

Signature:



WAC 220-352-010 Fish receiving ticket definitions. The following definitions apply to this chapter:

(1) "Department" means the Washington Department of Fish and Wildlife, Fish Program - Commercial Harvest Data Team, 600 Capitol Way North, Olympia, Washington 98501-1091.

(2) "Fish" means food fish classified under WAC 220-300-370, game fish classified under WAC 220-300-380, and any other fish species subject to catch or harvest reporting requirements under state or federal law.

(3) "Fish broker" means a person who facilitates the sale or purchase of raw or frozen fish or shellfish on a fee or commission basis, without assuming title to the fish or shellfish and is required to have a fish dealer license.

A broker is not required to have a fish dealer license if the fish or shellfish only transit the state of Washington, and no storage, handling, processing, or repackaging occurs within the state.

(4) "Fish buyer," "buyer," or "wholesale fish buyer" means a person who:

(a) Takes first possession or ownership of fish or shellfish directly from a commercial fisher that is landed into the state of Washington; or

(b) Takes first possession or ownership of raw or frozen fish or shellfish in the state of Washington from interstate or foreign commerce; or

(c) Engages in the wholesale buying or selling of fish or shellfish harvested by fishers exercising treaty rights; or

(d) Acts as an agent for a wholesale fish buyer, to include purchasing or receiving fish or shellfish on a contractual basis.

(5) "Fish receiving ticket" is an official department document, available in paper or electronic form, for recording the delivery of commercial fish and shellfish and related transactions identified in WAC 220-352-020.

(6) "Fisher" means a person engaged in commercial fishing activities.

(7) "Fresh" or "raw" means unprocessed and unfrozen, regardless of whether the fish or shellfish are in the round, cleaned, or packaged for retail sale.

(8) "Frozen" means completely frozen throughout. Flash frozen and surface glaze frozen fish and shellfish are unfrozen fish and shellfish.

(9) "Groundfish" refers to the flatfish, rockfish, and roundfish species managed under the Pacific Fishery Management Council's Pacific Coast Groundfish Fishery Management Plan and equivalent management plans in British Columbia and Alaska. The term is largely synonymous with the definition of "bottomfish" at WAC 220-300-040 but identifies a more limited subset of species.

(10) For deliveries made from the groundfish fisheries operating under 50 C.F.R., Part 660, the terms "to land(())", "landing(())", and "landed" are equivalent to the term "to deliver" as defined under RCW 77.15.630 (4) (b).

(11) "Location services" is a feature of an electronic computing device which enables applications and websites to automatically generate a geographic location of a person or device.

(12) "Nontreaty" means all entities not qualified by definition as "treaty."

~~((12))~~ (13) Except as provided, "original receiver" or "receiver" means a person who holds a wholesale fish buyer endorsement or a limited fish seller endorsement. Except as provided, an original receiver means the first person in possession of fish or shellfish in the state of Washington who is acting in the capacity of a buyer:

(a) A fisher who is not the holder of a limited fish seller endorsement and who sells fish or shellfish to anyone other than a wholesale fish buyer, or a fisher who delivers fish or shellfish and places the fish or shellfish into interstate or foreign commerce, is the original receiver of the fish or shellfish;

(b) A cold storage facility that holds fish or shellfish for a fisher is not an original receiver, provided that the facility does not process, package, or otherwise handle the fish or shellfish;

(c) A person transporting fish or shellfish on behalf of a fisher, and who is in possession of an accurately completed commercial food fish and shellfish transportation ticket, is not an original receiver, provided that the fish or shellfish are transported only to a cold storage facility or to a wholesale fish buyer.

~~((13))~~ (14) "Processed" means preparing and preserving and requires a fish buyer's license. Preserving includes treating with heat, including smoking and kippering. Cooked crab is processed. Preserving also includes freezing fish and shellfish.

~~((14))~~ (15) "Shellfish" means shellfish classified under WAC 220-320-010 and any other marine invertebrate species subject to catch or harvest reporting requirements under state or federal law.

~~((15))~~ (16) "Terms of use" are the rules, specifications, and requirements for the use of department-approved electronic catch reporting software or applications.

(17) "Treaty" and "treaty Indian," for purposes of fish receiving tickets only, means persons who are members of federally recognized Indian tribes who harvest fish or shellfish in Washington pursuant to an Indian treaty, whether such harvest is on or off reservation.

~~((16))~~ (18) "Working day" means Monday through Friday, exclusive of a Washington state or federal holiday.

AMENDATORY SECTION (Amending WSR 18-11-052, filed 5/10/18, effective 6/10/18)

WAC 220-352-040 Required information for Washington state nontreaty fish receiving tickets. (1) The following information is required to be reported on all nontreaty fish receiving ticket forms for all deliveries except imports (WAC 220-352-020 (1)(b)):

(a) Fisher identification: The name and license number 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, unless the fishery does not require a vessel.

(d) WDFW boat registration: The Washington department of fish and wildlife boat registration number, unless the fishery does not require a vessel.

(e) Gear: The code number or name of the specific type of gear used.

- (f) Fisher's signature: The signature of the licensed deliverer as required in WAC 220-352-140.
- (g) Date: Date of landing.
- (h) Original receiver: Name of original receiver and the department number assigned to original receiver.
- (i) Buyer identification: The name of buyer and the department number assigned to buyer.
- (j) Receiver's signature: The signature of the original receiver as required in WAC 220-352-140.
- (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) Port: Port or landing location of delivery using the relevant location code in use by the department.
 - (o) Species description: Species must be reported using the relevant species or species category code in use by the department.
 - (p) Delivery amounts:
 - (i) Number of individuals caught: Deliveries of salmon and sturgeon and all species landed as part of an incidental catch allowance or catch ratio restriction that is expressed in numbers of fish must be reported as counts of individuals.
 - (ii) The number of ghost shrimp in dozens, the number of oysters in dozens or gallons.
 - (iii) 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.
 - (q) Value of fish and shellfish sold or purchased.
 - (i) Summary information for species or species groups landed: Price per pound or per unit and total value for the line.
 - (ii) Total amount: Total value of landing.
 - (r) Take-home fish: Species, number, and pounds of fish or shellfish retained for personal use.
 - (s) Crew: The name and signature of crew members who take home fish for personal use.
 - (t) Fish ticket number: Alphanumeric or numeric code assigned to uniquely identify the fish ticket.
 - (u) Any other fishery specific requirements under this chapter.
- (2) For deliveries reported using paper fish receiving ticket forms:
 - (a) A valid license card or duplicate license card issued by the department used with an approved mechanical imprinter satisfies the requirements in subsection (1)(a) through (e) of this section except as provided in WAC 220-352-150.
 - (b) A valid dealer or buyer card issued by the department used with an approved mechanical imprinter satisfies the requirements in subsection (1)(h) and (i) of this section.
- (3) For import deliveries under WAC 220-352-020 (1)(b), the receiver must:
 - (a) Report the following information on the fish receiving ticket form:
 - (i) Place of origin: Area of harvest using the department provided area code.

(ii) Date of import: Date the fish or shellfish entered Washington state.

(iii) Buyer or broker name.

(iv) Fisher or harvester name.

(v) Deliverer name.

(vi) Delivery amount: Species description and weights.

(b) Attach any previously completed fish receiving ticket, or equivalent document, or the bill of lading to the receiver's retained copy of the paper or electronic fish receiving ticket form.

(4) For deliveries reported using electronic fish receiving tickets: If required by the terms of use of a department-approved electronic catch reporting software or application, the receiver must enable location services so that geolocation may be automatically determined during completion and submission of a fish receiving ticket in accordance with WAC 220-352-060.