



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: June 21, 2022

TIME: 11:30 AM

WSR 22-13-153

Agency: Washington Department of Fish and Wildlife (WDFW) P2021-07

Original Notice

Supplemental Notice to WSR _____

Continuance of WSR _____

Preproposal Statement of Inquiry was filed as WSR 21-11-094 on May 19, 2021 ; 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) Designating an Emerging Commercial Fishery in the Lower Columbia River for the use of alternative commercial fishing gears, including purse seines, beach seines, and pound nets. This fishery will also require a fisher possess and experimental fishing permit prior to the start of the fishery.

Hearing location(s):

Date:	Time:	Location: (be specific)	Comment:
August 3, 2022	1:00pm – 2:30pm	In-person at WDFW Region 5 Ridgefield Office 5525 S 11 th Street Ridgefield, WA 98642 and virtually	Zoom Meeting https://us02web.zoom.us/j/81450146884?pwd=bUJ6aTcxa2JDaG1CczhZd0J4dm9GUT09

Date of intended adoption: November 1, 2022 (Note: This is **NOT** the **effective** date)

Submit written comments to:

Name: Charlene Hurst

Address: 5525 S. 11th St., Ridgefield, WA 98642

Email: ColumbiaRiverCommercial102@PublicInput.com

Fax: Voicemail message: 885-925-2801 Project code 4006

Other: Website: <https://publicinput.com/ColumbiaRiverCommercial102>

By (date) August 3, 2022

Assistance for persons with disabilities:

Contact Civil Rights Compliance Coordinator

Phone: (360) 902-2349

Fax:

TTY: 1-800-833-6388 or (711)

Email: Title6@dfw.wa.gov

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

By (date) August 3, 2022

Purpose of the proposal and its anticipated effects, including any changes in existing rules: The purpose of this rule is to allow for alternative commercial fishing gears to be used for commercial fishing in the Lower Columbia River using an emerging commercial fishery license and an associated experimental gear permit. This fishery will be limited entry with participants chosen from a one-time lottery in the first year the fishery is offered. The anticipated effects are that some commercial fishers may use these gears to harvest salmon when fisheries are open for commercial harvest using the existing commercial allocation as described in Policy C-3630 for the Columbia River.

Reasons supporting proposal:

This rule designates an emerging non-treaty commercial fishery in the Lower Columbia River to gather information and data on the use of other commercial fishing gears such as seines, and pound nets. This limited entry fishery is established consistent with RCW 77.70.160 and is implemented based on Policy C-3630, which includes guiding principles and actions to improve the management of salmon in the Columbia River basin. This designation is the next step in gathering information on how these gears perform in a commercial fishery, as opposed to a test fishery or in a research capacity and is a necessary step to providing the WA legislature the information they need to decide whether to legalize these gears (per RCW 77.70.180).

Statutory authority for adoption:

RCW 77.04.012, 77.04.020, 77.04.130, 77.12.045, 77.12.047, 77.70.160, 77.50.030, 77.65.400

Statute being implemented:

WAC 220-360-500 Designation of an Emerging Commercial Fishery in the Lower Columbia River.

WAC 220-360-510 Columbia River emerging commercial fishery -- Qualifications.

WAC 220-360-520 Columbia River emerging commercial fishery – Issuance of an emerging commercial fishery license and experimental fishery permit – License and permit conditions.

WAC 220-360-530 Columbia River seine emerging commercial fishery – Season, area, and gear requirements.

WAC 220-360-540 – Columbia River emerging commercial fishery – Allowable possession and sales – Catch handling requirements.

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: Gear, season, and permit specifications associated with the Emerging Commercial Fishery will be decided annually based on salmon and steelhead run sizes, availability of impacts to listed species under the Federal Endangered Species Act and as part of the North of Falcon and Compact processes.

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

Private
 Public
 Governmental

Name of agency personnel responsible for:

	Name	Office Location	Phone
Drafting:	Charlene Hurst	Ridgefield, WA	360-605-0536
Implementation:	Ryan Lothrop	Olympia, WA	360-902-2808
Enforcement:	Captain Jeff Wickersham; Captain Dan Chadwick	Ridgefield, WA; Montesano, WA	360-906-6714 or 360-249-4628 ext. 252

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 rule proposal does not require a cost benefit analysis per RCW 34-05-328(5)(a)(i)

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. _____

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: June 21, 2022
Name: Annie Szvetecz
Title: Agency Rules Coordinator

Signature: 
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NEW SECTION

WAC 220-360-500 Designation of an emerging commercial fishery in the Lower Columbia River. (1) The director designates an emerging commercial fishery in the Lower Columbia River. The director has determined a need to limit the number of participants in this fishery.

(2) It is unlawful to fish for, possess, or deliver salmon taken for this fishery unless the fisher possesses a valid emerging commercial fishery license and experimental fishery permit. A violation of this subsection is punishable under RCW 77.15.500 Commercial fishing without a license—Penalty.

NEW SECTION

WAC 220-360-510 Columbia River emerging commercial fishery—Qualifications. To qualify for an emerging commercial fishery license and experimental fishery permit, a person must:

(1) Possess a commercial gillnet salmon license/permit issued by Washington (WA) or Oregon (OR) for the Columbia River; and

(a) Demonstrate by valid Washington or Oregon fish receiving tickets that salmon have been taken in the Columbia River or Columbia River select areas within the most recent five calendar years under that license or by the applicant under a commercial salmon license issued for the Columbia River; or

(b) Demonstrate participation in a test fishery (WA) or possession and use of an experimental gear permit (OR) using alternative commercial fishing gears within the most recent five calendar years.

(2) Have at least three years of commercial salmon fishing experience.

(3) Have at least one year of fishing experience (commercially or in a research/test fishery capacity) with purse seines, beach seines, or a pound net.

(4) Be free of a commercial fishing or other related violation within the last 10 years.

NEW SECTION

WAC 220-360-520 Columbia River emerging commercial fishery—Issuance of an emerging commercial fishery license and experimental fishery permit—License and permit conditions. (1) To maintain consistency in this fishery enabling the department to gather the best available information, a fisher selected by lottery in the initial year the fishery is offered will be able to renew their permit for the duration of the fishery.

(2) Applications for participation in the one-time lottery are due by March 15th of the initial year in which the fishery is offered.

(a) Only one application per person is allowed, and only one gear type may be permitted per person.

(b) The alternative gear an applicant is interested in fishing is in the applicant's possession by the time their application is submitted.

(3) Issuance of the annual emerging commercial fishery license and experimental fishery permit will occur by May 15th prior to the start of each fishing season.

(a) If the total number of available permits is not filled from the applications received by the deadline, the department may ask for additional applications.

(b) Applicants selected must respond within 10 business days of being notified by the department to accept the permit and purchase the emerging fishery license. If the applicant fails to purchase the license and permit within 10 business days of notification of selection, the department may issue the license and permit to another applicant.

(4) The conditions of possessing a valid license and permit are as follows:

(a) Fishery participants are not precluded from participation in other commercial fisheries.

(b) Fishery participants are required to have a state observer observing their catch while actively fishing.

(c) If a permit holder fails to make multiple landings during the fishery, the experimental permit issued to that fisher will be voided, that person will have his or her name permanently withdrawn from the applicant pool, and a new applicant will be selected from the applicant pool.

(d) This license and permit are not transferable between persons. The license and permit holder must be present and in possession of a valid license and permit during fishing operations. A violation of this subsection is punishable under RCW 77.15.540 Unlawful use of a commercial fishery license—Penalty.

(e) It is unlawful to violate the conditions of the emerging commercial fishery license and experimental fishery permit. A violation of this subsection is punishable under RCW 77.15.540 Unlawful use of a commercial fishery license—Penalty.

(f) This license and permit may be revoked at the discretion of the director and future licenses and permits denied for failure to comply with conditions specified in the permit or violations of other commercial fishing regulations.

NEW SECTION

WAC 220-360-530 Columbia River emerging commercial fishery—Season, area, and gear requirements. (1) The following gear is allowable:

(a) Purse seines as defined in WAC 220-350-110.

(b) Beach seines as defined in WAC 220-350-040.

(c) Pound nets as defined here as nets attached to fixed pilings, stakes, and/or anchors to form a lead, guiding fish into at least one heart, pot, or spiller that directs fish into a live well for sorting.

(2) Other gears may be considered for inclusion in this fishery if:

(a) The gear has a TAC approved mortality rate; and

(b) It is brought forward by a commercial fisher possessing a Columbia River commercial fishing license.

(3) All other season, area, and gear requirements will be as determined by the states of Oregon and Washington via the Columbia River compact process.

NEW SECTION

WAC 220-360-540 Columbia River emerging commercial fishery—Allowable possession and sales—Catch handling requirements. (1) Allowable possession and sales: Salmon, and as determined by the states of Oregon and Washington via the Columbia River compact process. All species other than salmon must be carefully handled and promptly returned to the water.

(2) Handling of catch: Salmon catch may only be handled by hand or with rubber coated nets when sorting fish. Fish must be sorted while submerged in the water; it is unlawful to dry sort fish on land or on deck.