



RULE-MAKING ORDER

CR-103P (May 2009)
(Implements RCW 34.05.360)

Agency: Washington Department of Fish and Wildlife

Permanent Rule Only

Effective date of rule:

Permanent Rules 10-137

31 days after filing.

Other (specify) _____ (If less than 31 days after filing, a specific finding under RCW 34.05.380(3) is required and should be stated below)

Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?

Yes No If Yes, explain:

Purpose: Amend rules for commercial salmon fishing Puget Sound, including WAC 220-47-302, 220-47-307, 220-47-311, 220-47-401, 220-47-411, 220-47-427, and 220-47-428.

Citation of existing rules affected by this order:

Repealed:

Amended: WAC 220-47-302, 220-47-307, 220-47-311, 220-47-401, 220-47-411, 220-47-427, and 220-47-428.

Suspended:

Statutory authority for adoption: RCW 77.04.020, 77.12.045, and 77.12.047

Other authority :

PERMANENT RULE (Including Expedited Rule Making)

Adopted under notice filed as WSR 10-06-091 on March 1, 2010 (date).

Describe any changes other than editing from proposed to adopted version:

In WAC 220-47-311, the dates for openings were adjusted for Areas 7, 7A, 7B, 7C, 8A, 12, and 12B. Opening hours were adjusted for Areas 8D, 10 and 11. Wild coho retention was prohibited in Areas 12, 12B, and 12C.

In WAC 220-47-411, dates for openings were adjusted for Areas 6D, 7, 7A, 7B, 7C, 8A, 8D, 9A, 10, 11, 12, 12B, and 12C. Opening hours were adjusted for Areas 8D, 10 and 11.

If a preliminary cost-benefit analysis was prepared under RCW 34.05.328, a final cost-benefit analysis is available by contacting:

Name: _____ phone () _____
Address: _____ fax () _____
e-mail _____

Date adopted: July 7, 2010

NAME (TYPE OR PRINT)

Philip Anderson

SIGNATURE

TITLE

Director

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: July 07, 2010

TIME: 11:46 AM

WSR 10-14-129

(COMPLETE REVERSE SIDE)

**Note: If any category is left blank, it will be calculated as zero.
No descriptive text.**

**Count by whole WAC sections only, from the WAC number through the history note.
A section may be counted in more than one category.**

The number of sections adopted in order to comply with:

Federal statute:	New	_____	Amended	_____	Repealed	_____
Federal rules or standards:	New	_____	Amended	_____	Repealed	_____
Recently enacted state statutes:	New	_____	Amended	_____	Repealed	_____

The number of sections adopted at the request of a nongovernmental entity:

New	_____	Amended	<u>7</u>	Repealed	_____
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The number of sections adopted in the agency's own initiative:

New	_____	Amended	<u>7</u>	Repealed	_____
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The number of sections adopted in order to clarify, streamline, or reform agency procedures:

New	_____	Amended	_____	Repealed	_____
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The number of sections adopted using:

Negotiated rule making:	New	_____	Amended	_____	Repealed	_____
Pilot rule making:	New	_____	Amended	_____	Repealed	_____
Other alternative rule making:	New	_____	Amended	_____	Repealed	_____

Attachment A
Concise Explanatory Statement
Puget Sound Commercial Salmon Fishery Regulations for 2010

This Concise Explanatory Statement (CES) describes the Department of Fish and Wildlife's (WDFW) reasons for adopting its 2010 Puget Sound commercial salmon fishing rules and responds to public comments received on the proposed rules. The adopted rules are set forth in WAC 220-47-302, -307, -311, -401, -411, -427, and -428.

Rule Development Process

The 2010 annual public process for defining salmon fishery rules, known as the North of Falcon process, began on December 9, 2009, with a post-season review of the 2009 Puget Sound commercial salmon seasons. This meeting was held with commercial industry representatives to discuss outcomes of the 2009 seasons and to begin discussion of proposed 2010 seasons. At the request of the industry WDFW held an additional 2009 post-season review meeting on January 29, 2010. Proposed 2010 commercial salmon season regulations were published as Washington State Register number 10-06-091 on March 1, 2010. The 2010 forecasts of salmon stocks and proposals for the structure of the 2010 Puget Sound commercial salmon fisheries were the topics of the first 2010 North of Falcon public meeting held on March 2. Subsequent additional public meetings were held on March 16, March 25, April 6, and during the week of April 11-15, for the purpose of gathering input from industry representatives on season structures and rules for the 2010 fisheries. In addition to input from industry representatives at these public meetings, WDFW also received comments by letter and electronic mail during the North of Falcon process, regarding the potential structure of fishing seasons and regarding proposals that were discussed at these public meetings. A formal rule-making hearing was held on April 5, 2010, to provide an opportunity for oral comment on WDFW's proposed rules. No comments or testimony were presented at the hearing.

During the 2010 North of Falcon season planning process, the Northwest Treaty Tribes and WDFW conducted scientific meetings and policy level discussions to agree on conservation objectives, runsize forecasts, and estimates of the allowable catch shares for the various salmon runs considered in defining fishing levels. WDFW and the tribes also reached agreement on coordinated fishing schedules for tribal- and state-managed Puget Sound salmon fisheries. These schedules provide days of the week that are exclusively reserved for tribal fishing in areas where non-Indian fishing is also conducted.

Puget Sound commercial salmon fishing seasons proposed for adoption by WDFW in 2010 are the product of this public North of Falcon process. Written comments were received from the Puget Sound Harvesters Association (March 2, April 5), Purse Seine Vessels Owners Association (March 23), Gendler & Mann, LLP (April 5), Peter Knutson (April 4), and the concerned Puget Sound gillnet fishermen (April 28).

Rationale for Adoption of Rules

WDFW considered all the facts and circumstances surrounding this season setting action, and it carefully reviewed all input from industry representatives and the general public during the 2010 North of Falcon public meetings and the state's rule making process, regarding preferred fishing rules. WDFW considered and relied upon the best technical and scientific information available to tribal and state fishery management experts, including pre-season forecasts of the abundance of salmon stocks, and data used during the season to update forecasts. Important characteristics of the Puget Sound commercial fishery were considered, including the total number of licensed and potentially participating vessels in the fishing fleets for each fishery, and differences in power of the different gear types (gillnet, purse seine, reef net). The department also considered fishing schedules of tribal fisheries that must be coordinated with the state's commercial fishing schedules as part of the co-management process developed under sub-proceedings of United States v. Washington.

Regulations for the 2010 Puget Sound commercial salmon fisheries were considered with respect to the achievement of the following management objectives that were shared with industry representatives during the North of Falcon public process:

- 1) Ensure the conservation of target species – meet spawning goals;
- 2) Ensure the conservation of non-target species - minimize bycatch or incidental fishing mortality;
- 3) Monitor and sample all fisheries;
- 4) Maintain the economic well-being and stability of the fishing industry;
- 5) Fully utilize the non-Indian allowable catch; and,
- 6) Fairly allocate harvest opportunity between gear groups.

WDFW concludes that the adopted 2010 Puget Sound commercial fishing regulations are consistent with these management objectives, based on the following rationale.

Objective #1: Ensure Conservation of Target Species – Meet Spawning Goals

The adopted rules and regulations of these commercial fisheries are constructed to ensure achievement of conservation objectives, defined for each target species, stock or management unit. The adopted rules define schedules with open fishing periods only for those fisheries that are directed at harvestable salmon stocks, and all fisheries are monitored to ensure that catches do not exceed that allowed for each species, stock or management unit at which the fishery is directed. WDFW relied on preseason forecasts of abundance to construct these fishing schedules, but it also considered information that will become available as fishing seasons are in progress. This in-season information will be used to update preseason forecasts of stock abundance and to revise estimates of the allowable catches for each fishery. The adopted rules define season openings from a pre-season planning perspective. However, changes to these openings are likely as managers determine there is a need to adjust fisheries to achieve the conservation objectives for the target species.

Objective #2: Ensure Conservation of non-Target Species – Minimize Bycatch

In structuring rules for the 2010 commercial salmon seasons, WDFW considered impacts of fisheries on non-target salmon species, ESA-listed Puget Sound steelhead and rockfish, and both ESA-listed and non-listed seabirds. The adopted regulations are structured to ensure that incidental mortalities on these different species are minimized by focusing fisheries at times and in areas of peak abundance for target salmon stocks, while avoiding times and areas with higher incidence of non-target species. When applying a regulation or rule to minimize bycatch, WDFW has considered the best available scientific information concerning the potential impact of these fishing seasons on non-target species, often relying on joint, tribal-state technical recommendations.

Since bycatch mortalities vary by fishing method, the objective of minimizing bycatch required WDFW to apply different rules to the different gear types. For example, salmon bycatch mortality associated with operation of reef net gear (used only in the Area 7 & 7A fisheries) is assumed by state and tribal fishery managers to be zero, because minimal contact with non-target salmon occurs with this gear during fishing operations and as bycatch is released. For purse seine gear in Puget Sound, state and tribal managers reviewed results of scientific studies on salmon bycatch mortality. The managers concluded that the majority of coho and Chinook salmon encountered by this gear will survive being sorted and returned to the water. (Chinook and coho salmon encountered in Puget Sound commercial salmon fisheries with purse seine gear are usually required to be released.)

WDFW is not aware of any scientific studies of bycatch mortalities on salmon caught in Puget Sound with gillnet gear concluding that a majority of encountered Chinook and coho salmon in Puget Sound commercial salmon fisheries would survive the process of handling and release. Due to this uncertainty, state and tribal scientists have not agreed on an assumed Chinook or coho survival rate for Puget Sound gillnet fisheries. Therefore, WDFW has not required release of these species in Puget Sound gillnet fisheries, except in the case of skiff gillnet fisheries operating in extreme terminal areas, and gillnet gear when fishing the early part of the Area 7/7A chum fishery to meet conservation objectives for minimizing impacts on wild coho.

With respect to bycatch mortality of non-target salmon species, WDFW concludes that its existing regulations to control encounter rates and release mortality rates for the Puget Sound commercial salmon fisheries are sufficient to meet the objective of minimizing bycatch mortality. This conclusion is based on the assumption that (1) season structures in 2010 are similar to those of recent years (existing data collected for recent seasons indicates that the level of non-target salmon encounters is insignificant), and (2) indirect estimates (sales receipts) of bycatch for the gillnet fishery reliably reflect true encounter rates (see next section on sampling and monitoring).

For the species other than non-target salmon caught as bycatch in Puget Sound commercial salmon fisheries, conservation concerns are increasing. These include ESA-listed seabirds, Puget Sound steelhead and Puget Sound rockfish.

For these species, data collected from recent seasons indicates a low encounter rate, but sampling programs will need to be improved in order to increase our confidence that encounter rates are sufficiently low to conclude that bycatch mortalities are truly minimized. Seabird bycatch mortalities in gillnet fisheries are a special concern since, out of all the types of nets used in Puget Sound commercial salmon fisheries, gillnets are believed to pose the greatest risk of entangling and drowning seabirds (USFWS opinion on the effects of the proposed action on the threatened marbled murrelet. 1994).

The adopted regulations for the 2010 Puget Sound commercial salmon seasons include restrictions specific to purse seine and gillnet gears that are expected to reduce seabird mortalities. These restrictions are identical to those implemented since the mid 1990's on the basis of recommendations of scientists conducting seabird bycatch studies. In addition, WDFW has concluded that closure of the Port Madison area is an appropriate and prudent measure to minimize bycatch of these species, and will apply this closure with the adopted regulations for 2010.

In summary, WDFW concludes that the adopted regulations for the 2010 Puget Sound commercial salmon seasons are reasonably constructed to meet the objective to minimize bycatch overall. However, particularly with respect to seabirds and other non-salmon species, existing information is insufficient to verify that gillnet fisheries have minimized incidental impacts. Future fisheries, especially consideration of gillnet fishing opportunity will depend on the ability to improve sampling programs (see Objective #3).

Objective #3: Monitor and Sample All Fisheries

Assessing non-target salmon bycatch is a matter of estimating both the number of fish encountered by the gear and the proportion of the fish released that will survive. WDFW relies on scientific studies to determine the release survival rate, but the most accurate estimates of fish or other species numbers incidentally encountered in purse seine and gillnet fisheries come from direct, on-board sampling by trained technical staff.

Sampling and monitoring programs implemented by WDFW in recent seasons have been almost entirely focused on purse seine fisheries. Very little direct or on-water sampling of gillnet gear operations has been conducted. WDFW sampling programs have not been applied to gillnet gear in recent seasons, primarily because the current WDFW budget for sampling these fisheries is inadequate to support a program capable of collecting sufficient samples to generate statistically reliable estimates of encountered Chinook and coho as well as non-salmon species in the gillnet fisheries.

A number of species and stocks of conservation concern are encountered incidental to Puget Sound commercial salmon fisheries, including ESA-listed seabirds, Puget Sound steelhead and Puget Sound rockfish. WDFW is considering changes in its sampling program to improve the quality of data collected. This will improve WDFW's confidence that fisheries are structured and implemented consistent with objective of minimizing bycatch mortalities for these species, but until the current sampling program is modified to provide adequate data, WDFW will manage the Puget Sound commercial salmon fisheries cautiously and will adjust fishing schedules if sampling data indicates

that non-target species bycatch levels for either gear type may be greater than levels expected or observed in recent seasons.

Objective #4: Maintain the Economic Well-Being and Stability of the Fishing Industry

The adopted rules and regulations of these commercial fisheries are designed to maintain the economic well-being and stability of the fishing industry is maintained. This management objective is challenging to address given the diversity of the Puget Sound commercial salmon fishing fleet, in terms of gear types, participation by gear type, and the number of discretely managed fisheries opened each year within Puget Sound. In addition, the economic health and stability of these fisheries depends on factors beyond the control of WDFW. Prices paid for salmon caught in these fisheries are influenced by coast-wide and international market conditions, and possibly by the success of local/niche marketing initiatives. Prices paid are also influenced by the abundance of salmon. Although abundance is difficult to predict with accuracy, the expected abundance of chum salmon in Hood Canal and South Sound for the 2010 season is similar to recent years that have had good prices paid, much improved from the depressed market conditions of 2000-2003.

WDFW concludes that the most effective means of attaining stability in the industry is providing a reasonably predictable season structure with full allowable harvest access. This gives fishing businesses the ability to plan for upcoming opportunities and to make their own business-based decisions about when and where to fish.

WDFW has considered the argument presented by the gillnet industry that the economic well-being of the fishing industry is promoted by structuring seasons that enhance success of local/niche marketing initiatives. In response, the season structure of the Areas 10 & 11 chum fishery includes additional, mid-week gillnet openings similar to those season structures that were initially provided with the 2007 season.

Objective #5: Full Utilization of the Non-Indian Allowable Catch

The adopted rules and regulations of these commercial fisheries are designed to ensure that the total allowable catches defined for each fishery are fully utilized. Season structures considered for 2010 reflect expected abundance of target salmon species and stocks, based on preseason forecasts. Salmon stock abundances will be updated as the season progresses, based on scientific information collected from the fisheries and agreements reached by the state and tribal co-managers. The non-Indian total allowable catch will be adjusted accordingly and may result in increasing non-Indian fishing opportunity. However, given the uncertainty associated with estimates of fishing effort, harvest rates, and the abundance of the target or incidentally caught resources, in-season adjustments to the fisheries may be necessary to meet conservation objectives. These adjustments could result in the harvest of less than the full non-Indian allowable catch. WDFW will attempt to provide advanced notice to the commercial fishing fleet of any changes to schedules.

If tribal harvest allocations are not fully utilized, then WDFW may seek to maximize the state's commercial-fishing harvest opportunity by adjusting the non-Indian total allowable catch consistent with the Washington Fish and Wildlife North of Falcon policy (C-3608). This policy states: "The Department will seek non-treaty fishing access to unutilized portions of treaty harvest allocations through the implementation of pre-season agreements, taking into consideration changes in abundance, fishery conflicts, and factors that may influence attainment of spawning escapement objectives."

Objective #6: Fairly Allocate Harvest Opportunity between Gear Groups

Allocation of harvest opportunity using season structures is the most equitable means of regulating the Puget Sound commercial salmon fishery given historical variation in catch outcomes, differences in fishing efficiency between the two groups, economics of the fishery and market forces, fluctuations in the fishing effort and fleet sizes of the two groups, and management costs for implementation. WDFW has never defined specific catch allocations for gillnet, purse seine or reef net gear types.

The adopted seasons for 2010 define an equal number of days for gillnet and purse seine gear type unless it has been determined that a schedule with unequal time is more effective in achieving one or more management objectives for that fishery, or in order to facilitate consensus among State, tribal, and/or industry representatives (provided that such deviation is consistent with WDFW's management objectives).

An equal number of days for each of the gear types is scheduled in 2010 for the Area 7/7A (chum) fishery and the Area 7B (late coho and chum) fishery. Exceptions to the equal time season structure in 2010 are found with the Area 7B (Chinook and early coho), Area 8A (coho), Area 8D (coho and chum), Area 10 & 11 (chum) and Area 12/12B/12C (chum) salmon fisheries.

The rationale for departing from an equal-time season structure is detailed by fishery:

Area 7B (Chinook and early coho) – Three days per week of gillnet fishing is allowed compared with one day of purse seine fishing for the 2010 season. Prior to the 2002 season, this fishery was open to gillnet gear but closed to purse seine fishing by chapter 77.50.010 RCW. Industry representatives supported modifying this RCW in 2002 to allow purse seine fishing as part of an overall commercial fishing package that contained additional gillnet opportunity. Tribes who conduct fisheries simultaneous to the non-Indian fishery requested the number of days opened to purse seine gear be limited to just one day per week as part of the 2010 North of Falcon agreement.

Area 8A (coho) – Gillnet gear is opened four days while purse seine gear is opened three days. A very limited number of harvestable coho salmon are available. To achieve the conservation objective for coho salmon, regulations will allow only two purse seine vessels to fish during the first two weeks of the 2010 coho season. No restriction is placed on the number of gillnet vessels participating.

Area 8D (coho and chum) – Purse seine gear is limited to one day per week during the entire coho fishery and in two out of the five weeks of the scheduled chum fishery. Gillnet fishing is allowed five days per week during the coho fishery and two days per week during the chum fishery. This schedule responds to a Tulalip Tribal request to limit purse seine vessel activity to reduce conflicts with tribal fishers in this area, as part of the 2010 North of Falcon state-tribal agreement.

Area 10 & 11 (chum) – The 2010 schedule provides twelve fishing days for gillnet gear and eight fishing days for purse seine gear. Additional days open for gillnet have been provided as with the 2008 and 2009 seasons in response to a request from gillnet gear representatives during the North of Falcon process desiring local/niche marketing opportunities. WDFW believes that providing these additional gillnet openings to foster local niche marketing will contribute to the economic well-being and stability of the fishing industry, is consistent with the other management objectives for this fishery, and is therefore a valid reason for departing from the equal-time season structure for the Area 10 & 11 chum fishery.

Area 12/12B (chum) and 12C (chum) – The 2010 Area 12/12B chum fishery schedule provides for ten gillnet fishing days and seven purse seine fishing days. The schedule has equal time open for both gillnet and purse seine gears in two of the five weeks scheduled. For the other three weeks scheduled in 2010, only one day of purse seine fishing is allowed per week, while two days are open for gillnet fishing per week. The 2010 Area 12C chum fishery is planned with a schedule matching the Area 12/12B fishery except for the final week of the season, with a total of six days opened for gillnet and four days opened for purse seine. During the North of Falcon process, the purse seine industry requested equal time in these Hood Canal area chum (and other Puget Sound) fisheries. However, as part of the overall state-tribal fisheries agreement designed to maximize tribes' harvest of their full treaty share while avoiding gear conflicts, fishing time for purse seine is more limited than for gillnets.

The agency's basis for concluding that harvest opportunity for the Areas 10 & 11 chum fishery has been fairly allocated deserves additional discussion. From 1973-2002, when WDFW managed the Area 10 & 11 chum salmon fishery with schedules providing equal time for the two gear types, the average gillnet catch share was 42%. Currently, only 2.5 gillnet vessels are licensed for each purse seine vessel compared with a ratio of 3.8 for the period 1973 to 2002. This represents a 32% reduction in the size of the gillnet fleet relative to the purse seine fleet. Acknowledging that catch share outcomes vary between years due to many factors beyond WDFW's management control, a reasonable expectation for the 2010 season gillnet catch share is 29%. This expectation is within the range of outcomes for seasons with similar schedules adopted for the recent period 2007-2009 (catch share outcomes for that period ranged from 22% to 31%). It is also consistent with the gillnet historic annual catch percentage, when averaged over all years

in which WDFW allocated equal time for gillnet and purse seine fleets (1973 to 2002) and adjusted for the 32% reduction in the relative size of the gillnet fleet. Moreover, WDFW's season structure for Areas 10 & 11 includes alternating weekly first day of the week openings for purse seine and gillnet fleets. WDFW believes that this alternating schedule contributes to a fair allocation of harvest opportunity. Further discussion on the topic of harvest opportunity allocation and catch sharing for the Areas 10 & 11 chum fishery is presented in the following section detailing responses to public comments.

Managing the Puget Sound commercial salmon fisheries to achieve a specified allocation of the catch for each gear type would be difficult, due to WDFW's inability to accurately predict numbers of fishing vessels likely to participate in a particular fishery, catch rates by gear type, the effect of non-biological factors on those catch rates, such as prices paid to fishers, market availability and changes in gear efficiency over time. Further, managing these fisheries to achieve a specified allocation of the catch for each gear type would increase instability of the fishing industry by making frequent and numerous in-season adjustments to fishing schedules on short notice.

Managing these fisheries to achieve a specified allocation of the catch for each gear type would not be cost-effective for the Department, given the number of fisheries that would require allocation calculations and the significant increase in Department resources needed to develop timely estimates and implement regulation changes. WDFW cannot assume this additional burden.

To conclude, season structures defined for the adopted 2010 Puget Sound commercial salmon regulations reasonably provide a fair allocation of harvest opportunity between gear types. While expected catch share outcomes for all fisheries have not been estimated, WDFW has estimated the likely catch share outcome for the Areas 10 & 11 fishery, the most contentious fishery in recent years with respect to allocation of harvest opportunity. WDFW concludes that the most likely result of the 2010 fishing seasons is consistent with the historical record, changes in fleet composition, and purposeful increases in gillnet opportunity to address niche/local market preferences of the industry.

Response to Comments Received on the Proposed 2010 Puget Sound Commercial Salmon Seasons

Comment: WDFW must manage for a 50-50 harvest ratio between purse seine and gillnet groups.

The Puget Sound Harvesters Association (PSHA) and Peter Knutson proposed that WDFW manage the Areas 10 & 11 chum fishery in 2010 to achieve a 50% allocation of the catch. The Purse Seine Vessel Owners Association (PSVOA), in contrast, proposed that WDFW manage the Areas 10 & 11 and Hood Canal chum fisheries with a season based on equal time for each gear.

As indicated above, WDFW structured the seasons for all Puget Sound commercial salmon fisheries on the basis of equal time, unless it determined that a schedule with unequal time is more effective in achieving one or more management objectives for that fishery, or in order to facilitate consensus among State, tribal, and/or industry representatives (provided that such deviation is consistent with WDFW's management objectives). For Areas 10 & 11, WDFW provided additional harvest days to the gillnet fleet in order to foster local niche marketing that WDFW believes will contribute to the economic wellbeing of the fishing industry.

WDFW considered the proposal to allocate catch shares in Areas 10 & 11 but decided against it because (1) equal catch sharing (50%) between the gillnet and purse seine fishers is not consistent with historical catch ratios; (2) the size of the gillnet fleet relative to the purse seine fleet has been reduced in recent years; (3) the 2010 season schedule is reasonably expected to produce a catch share outcome that is consistent with historical catch ratios, adjusted for recent fleet size changes; (4) managing the fishery using a catch sharing approach would increase WDFW's management costs relative to the season schedule approach and is therefore not a cost-effective use of public resources; (5) catch allocation is not necessary to achieve the management objectives for this fishery, and, (6) increasing the gillnet catch share to 50% would likely result in a significant increase in bycatch. A detailed discussion of WDFW's consideration of this industry comment follows:

- (1) Equal catch sharing is inconsistent with historical catch ratios - WDFW has never defined catch allocations for the gillnet and purse seine gear types for the Area 10 & 11 chum salmon fishery or for any Puget Sound commercial salmon fishery, although the agency has the statutory authority to do so. From 1973 to 2002, when WDFW managed the Area 10 & 11 chum salmon fishery with schedules providing equal time to the two gear types, the average gillnet catch share was 42%. PSHA and Gendler & Mann request a 50% catch share based on their calculation of average gillnet catch during the period from 1973 – 1993. The justification they provided for using only the earlier portion of the entire history is that the gillnet catch share declined after 1993. However, the gillnet catch share has been declining since well before 1993. The ten-year average catch share for the period 1973-1982 was 59%, the average share for the period 1983-1992 was 47%, and the average share for the period 1993-2002 was just 20%. Limiting the

data to the period from 1973-1993 presents a biased historical picture of the Areas 10 & 11 chum fishery, because it excludes years with lower gillnet catch.

Numerous factors affect the catch sharing outcome over time and between years (e.g., chum salmon abundance, market conditions, relative fleet size, permit-holder decisions to participate in other Puget Sound commercial fisheries opened at the same time). Gillnet catch share has varied between 5% and 79% over the period 1973-2002 with equal time opened for each gear.

(2) Fleet Size Changes – The size of the non-Indian fleet was reduced by government-funded programs to retire licenses and vessels from active use and thereby retain the economic viability of the fleet given expectations for lower non-treaty commercial harvest allocations. The most recent example of such a fleet size reduction was the “buy-back” program associated with the renegotiation of Annex IV of the Pacific Salmon Treaty in 1999. Currently only 2.5 gillnet vessels are licensed for each purse seine vessel compared with a ratio of 3.8 for the period 1973-2002. This represents a 32% reduction in the size of the gillnet fleet relative to the purse seine fleet. To estimate the effect of a fleet-size change on catch sharing, this 32% relative reduction in the gillnet fleet can be applied to the average gillnet catch share for the same historical period 1973-2002 (42%). Acknowledging the extensive variability in catch share outcomes due to other factors, a reasonable expectation for the gillnet catch share adjusted to the current relative fleet size, would be 29%. In developing the 2010 season structure, WDFW neither expects nor intends any specific catch sharing outcome or range of outcomes. The agency understands that the actual outcome will be determined by factors beyond its control, as evidenced by the variable catch outcomes from 1973-2002, when WDFW provided equal time to each gear group.

(3) The Expected 2010 Catch Share Outcome – WDFW has not allocated catch shares for the 2010 season. While WDFW has considered the potential catch-share outcomes from the 2010 season structure, the accuracy of outcome predictions is highly uncertain. The history of the Areas 10 & 11 chum salmon fishery demonstrates this uncertainty. Catch shares for the period 1973-2002, when the fishery was managed with equal-time seasons, ranged from 5% to 79%, averaging 42% for gillnet caught chum. Catch shares for the recent period 2003-2009, when the fishery was managed through providing more time for the gillnet fleet, are still highly variable and ranged from 13% to 31%, averaging 25%. This range of outcomes is consistent with the reasonable expectation of a 29% gillnet catch share, adjusted for the current relative fleet size and gear ratios.

The 2010 season schedule is similar to those adopted for the period 2007-2009. The gillnet catch-share outcomes for that period ranged from 22% to 31%. WDFW concludes that the 2010 season schedule will produce a catch-share outcome consistent with 2007-2009, but adjusted for recent fleet size changes.

(4) WDFW Management Costs - Imposing a management regime for the purpose of achieving specific catch sharing targets for each gear type would require significant additional funding. WDFW would need to increase staffing to monitor and manage multiple quotas or catch percentages simultaneously as the season progresses. Currently, the agency has the capacity to provide gillnet and purse seine in-season catch estimates that are generally imprecise but are sufficient to ensure that the total non-Indian catch does not exceed the allowable total catch. These imprecise estimates often change dramatically over the season as late sales reports come in and as staff review data for errors. Additional staff would be required if WDFW were to commit to meeting gear-specific catch targets for this fishery. Otherwise, it would be impossible for the agency to improve the precision and timeliness of catch estimates necessary to achieve this commitment. Even with these additional staff, catch forecasts are likely to be highly inaccurate. Numerous factors beyond WDFW's management control affect catch outcomes for gillnet and purse seine gears, between years and even between openings within a season. Finally, if WDFW were to commit to meeting gear-specific targets for all Puget Sound commercial fisheries, then implementing the emergency regulation process of modifying scheduled fisheries would require additional staff.

The current status of the state's budget compels WDFW to choose lower-cost management alternatives to meet priority conservation objectives, while rejecting costlier alternatives that are intended to achieve lower-priority catch-allocation objectives.

(5) Catch Allocation is not necessary to Meet the Management Objective of Maintaining the Economic Well-Being and Stability of the Fishing Industry - As discussed in the previous section, if WDFW were to commit to meeting gear-specific catch targets, then the agency would need to change the fishing schedule more frequently to reach catch targets. WDFW believes such an alternative management approach would not further, and may be counter to achievement of the intended outcome of the management objective (4) to "Maintain the economic well-being and stability of the fishing industry," because commercial businesses rely on scheduled openings to plan marketing activities. PSHA criticized WDFW for taking in-season actions to modify season schedules in 2007 – "These closures of scheduled gillnet opportunity wreaked havoc on the direct marketing activities of our fleet..." (Puget Sound Harvesters Association Report – President's Message. February, 2008).

Peter Knutson said that the proposed regulations do not permit late-week marketing openings that would facilitate sales to local consumers. WDFW continues to support local "value-added" marketing approaches, such as those promoted by PSHA. The 2010 season schedule includes gillnet openings later in the week, specifically to facilitate sales of chum salmon at weekend local markets. The gillnet industry has provided evidence that weekend local markets contribute to the overall objective of promoting the economic viability of Washington's

commercial fishing industry. The gillnet industry believes that as a result of its local niche marketing WDFW should structure the Areas 1 & 11 season to achieve a 50% catch share for the gillnet fleet. WDFW disagrees, however, because as discussed above, allocating 50/50 catch shares is not necessary to accommodate local/niche marketing or to maintain the economic well-being and stability of the fishing industry.

(6) Increase in Bycatch -

The only logical means of achieving a 50% catch share for the gillnet fleet while still fully utilizing the non-Indian catch share for chum in the Areas 10 & 11 fishery would be to increase the number of gillnet openings. Considering the conclusion of scientists studying seabird mortalities, that gillnets in Puget Sound pose the greatest risk to entanglement and drowning of seabirds, it is logical to assume that such a change to scheduled fisheries would result in an increase in the bycatch mortality of seabirds. WDFW's management objectives place a high priority on minimizing bycatch.

Comment: There should be a fair allocation of harvest opportunity between gear groups. WDFW believes that a 50% catch allocation for gillnet and purse seine fleets would be inconsistent with management Objective (6) to "Fairly allocate harvest opportunity between gear groups." Equal catch shares are not consistent with the historical record of catch-sharing outcomes, as discussed above. Allocation of harvest opportunity using season structures is the most equitable means of regulating this fishery, given the historical variation in catch outcomes, differences in fishing efficiency between the two main gear groups, economics of the fishery and market forces, fluctuations in the fishing effort and fleet sizes of the two gear groups, and management costs of implementation. With season structures adopted from 2007 through 2010, WDFW has allocated the majority of the fishing opportunity to the gillnet fleet, departing from the historical precedent of equal time, to more effectively achieve fishery management objectives as described above. While WDFW has not designed the season specifically to achieve a catch-share outcome, and the agency considers the accuracy of catch-outcome predictions to be highly uncertain, WDFW's best estimate is that the season structure adopted for 2010 will result in a gillnet catch-share of approximately 29%. Given the historical gillnet catch-share, and the currently reduced size of the gillnet fleet, as described in a previous section of this statement, WDFW considers this expected outcome to be consistent with the management objective of fairly allocating harvest opportunity. WDFW also considers the alternating weekly first day of the week openings for purse seine and gillnet fleets, discussed below, as being consistent with the objective of fair allocation of harvest opportunity.

Comment: Eliminate weekly first day of the week openings for purse seine fishers. Gendler & Mann, LLP challenged WDFW's proposed schedule of alternating gillnet and purse seine first-day-of-the-week openings for the Areas 10 & 11 chum fishery. However, both PSHA and PSVOA proposed a season schedule consistent with WDFW's proposal, and PSVOA supported such a schedule for the Hood Canal chum fishery as well.

Both gillnet and purse seine fishers contend that any gear group fishing first during a given week (“first start”) has an advantage over the other gear group. This belief reflects assumptions that fishing success improves with abundance and that fish abundance is increased (i.e., a “build-up” occurs) through fish-schooling behavior during the days when no fishing is scheduled. In other words, the purse seine and gillnet fishers believe that the gear group that fishes after an opening for the other gear will have lower catch success.

Recent season data from the Area 10 & 11 chum fishery do not support this industry contention. For example, in 2007 during the first week of the Area 10 & 11 fishery, the gillnet gear group fished on Sunday, October 21, and caught 13,004 chum salmon. On the next day, Monday, October 22, the purse seine gear group fished and caught substantially more chum salmon (46,634). On Tuesday, October 23, the gill net gear group fished again and caught 17,639 chum salmon – more than were harvested on the first start day. The catch per vessel for gillnet gear on October 21 was 228 fish, but the catch per vessel for gillnet gear on October 23, following removal of fish by both purse seine gear and gillnet gear in the first opening, actually increased to 271 chum salmon.

WDFW concludes that scheduling alternating weekly first-day openings between gear types is consistent with the fishery management Objective (6) to fairly allocate harvest opportunity between the gear groups.

Comment: WDFW’s data was incorrect in its Small Business Economic Impact Statement (SBEIS).

PSHA and Gendler & Mann commented that the SBEIS filed by WDFW “is wrong in its assertion that compliance will not cause businesses to lose sales or revenue.”

Further, PSHA and Gendler & Mann commented that the SBEIS had multiple errors, and that “it is simply not true that the rules will cost small businesses less than \$5.00.” They said, “The rule will continue to crimp the gill net boat . . . by continuing to control harvest so that the gill net fleet catches less than 30% of the harvest.”

These comments misconstrued the intent of the SBEIS requirement of RCW 19.85. The 2010 rules define season openings and closures but do not modify gear or require additional equipment, supplies, labor, or professional services. The SBEIS assumes that the only increased cost to participating small businesses will be the cost of return postage on entry forms provided to fishery participants free of charge. Therefore, it is logical to assume that costs per business will increase by only 5\$ or less.

Catch sharing is not an issue addressed by the SBEIS. In any event, while catch outcome is highly uncertain, WDFW’s best estimate is that the 2010 regulations will result in a catch outcome consistent with outcomes in recent years.

Comment: The regulatory timeline precludes public comment because the regulations are not final.

PSHA, Gendler & Mann, LLP, and Mr. Knutzen challenged the WDFW rule making process because the hearing date this year was prior to completing the North of Falcon/PFMC process rather than afterwards. Throughout the North of Falcon process WDFW explained the changed timeline and the agency's belief that moving the timeline for rule-making forward strengthened the public-input process and the agency's compliance with the Administrative Procedure Act (chapter 34.05 RCW). In prior years the rule-making hearings were held 1 to 2 months after completion of the North of Falcon process and negotiations with tribal co-managers. If WDFW was compelled to make changes to the proposed regulations based on comments received after the North of Falcon process, those changes would have required re-opening negotiations with tribal co-managers. Moving the hearing and comment period forward and concurrent with the North of Falcon process strengthened the public-input process and increased WDFW's ability to respond to input by engaging tribal co-managers before negotiations were completed. The agency also implemented this timeline change for the other two hearings associated with North of Falcon rule making.

Comment: WDFW's schedule for gillnetters and purse seiners impedes local marketing. Peter Knutson commented that the proposed regulations do not permit late-week marketing openings for the Areas 10&11 chum fishery, so it is more difficult to sell Puget Sound chum salmon to local consumers. In fact, the adopted 2010 season structure specifically includes weekly openings for gillnet gear, to assist the industry in meeting the local marketing objective. These openings were also included in the season structure for the 2007-2009 seasons for the Areas 10 & 11 chum fishery, and WDFW has received positive views on the success of this structure from the gillnet industry overall. Mr. Knutson said that "state law specifically mentions that WDFW is charged with supported niche marketing efforts". However, the legislature's intent in state law (chapter 77.50.120 RCW) is to ensure that a sustainable level of salmon is made available for commercial harvest. This suggests the legislature recognized that fishers cannot develop niche markets to maximize a harvest's economic value unless there is a stable level of harvest. The law does not confer a responsibility upon WDFW to support niche markets, but WDFW nonetheless has modified seasons specifically to promote the local/niche marketing efforts of the gillnet fleet, in the interest of promoting the economic wellbeing and stability of the fishing industry.

Comment: Gillnetters deserve a larger catch share based on their higher permit numbers.

Peter Knutson expressed concern that gillnetters should get a larger catch share based on the fact that they have a greater number of permits than the purse seiners. WDFW acknowledges that gillnetters have more licenses (195 gillnet versus 75 purse seine in 2009) but the agency does not believe this fact justifies allocating a specific catch share, 50% or otherwise, to the gillnet fleet. However, WDFW wants to reiterate that it is providing a greater number of fishing days to the gillnet fleet than the purse seine fleet in the Areas 10 & 11 chum fishery about which Mr. Knutson is primarily concerned. Mr. Knutson also commented that WDFW should be allocating at least 50% of the harvestable salmon to the gillnet fleet, based on "enhancement taxes paid". WDFW presumes that he is referring to voluntary dues for member of the Puget Sound Harvesters

Association. If this is correct, such voluntary actions are neither endorsed nor required by WDFW as a condition of license participation in Puget Sound fisheries, so it is not apparent how such voluntary investments by fishing groups would affect access to or allocation of state-owned natural resources. These voluntary investments are not a legitimate basis for establishing a management regime that ensures a 50% gillnet catch share.

Comment: Permit prices justify allocating a 50% catch share to gillnetters.

Peter Knutson said that the proposed rules are discriminatory, as evidenced by current prices for gillnet permits compared to purse seine permits. WDFW does not dispute the fact that gillnet permit prices are declining relative to purse seine permit values, but the agency does not consider this fact as a primary consideration in setting the fishing seasons.

Comment: Purse seine net depth should be restricted.

Peter Knutson said that purse seiners have an enormous harvest advantage over gillnetters due to the fact that Washington does not restrict the depth of purse seine nets. WDFW acknowledges that purse seine net depth is unconstrained by regulation, and that purse seine gear has greater harvesting capacity and power, per vessel, than gillnet gear. However, WDFW does not believe that this fact compels restricting the efficiency of purse seine gear. Furthermore, imposing such a restriction could detract from meeting management Objective (5) to maintain the economic well being of the fishing industry. Purse seiners' greater harvesting power is offset to a degree by the lower number of purse seine permits allowed, versus gillnet permits (75 permits issued in 2009 compared with 195 gillnet permits). The potential for unacceptably high purse seine catch rates is limited in certain fisheries (e.g., Areas 10&11 and Hood Canal chum fisheries) by implementing seasons with concurrent openings, designed to effectively reduce the number participating in a specific fishery. Moreover, in certain fisheries (e.g., Areas 8A, 12 and 12C) WDFW has limited the number of purse seine vessels and/or purse seine fishing days as a means of ensuring conservation obligations are achieved.

Conclusion

WDFW has considered all the facts and circumstances surrounding the 2010 Puget Sound commercial salmon season schedule. The agency carefully reviewed all input from industry representatives during North of Falcon public meetings and the state's rule making process. The agency's 2010 Puget Sound commercial salmon fishing regulations comply with its statutory mandate and are consistent with WDFW's management objectives for these fisheries.

AMENDATORY SECTION (Amending Order 09-108, filed 7/9/09, effective 8/9/09)

WAC 220-47-302 Puget Sound--Lawful gear--Gill net. (1) It is unlawful to use drift gill net salmon gear in Puget Sound that exceeds 1,800 feet in length or contains meshes of a size less than 5 inches.

(2) It is unlawful to use skiff gill net salmon nets in Puget Sound that exceed 600 feet in length, 90 meshes in depth, or that contain meshes of a size less than 5 inches, except in Area 9A, where skiff gill nets are further restricted by not being more than 60 meshes deep. It is unlawful to retrieve skiff gill nets by any means except by hand (no hydraulics may be used). It is unlawful to fail to attend to skiff gill nets at all times.

(3) Drift gill nets and skiff gill nets shall be operated substantially in a straight line. It is unlawful to set such nets in a circle or to set them in other than a substantially straight line.

(a) It is unlawful to operate any drift gill net, attended or unattended, unless there is affixed, within five feet of each end of the net, two red ((polyform)) size A-3 buoys, marking the visible end of the cork line portion of the net. One of the two buoys shall be marked in a visible, legible, and permanent manner with the name and gill-net license number of the fisher.

(b) The cork line portion of the net shall be marked every 50 fathoms of the net with ((polyform)) size A-1 buoys.

(4) It is unlawful to take or fish for salmon with gill net gear in Areas 7 or 7A sockeye or pink salmon fisheries unless said gill net gear is constructed so that the first 20 meshes below the cork line are composed of five-inch mesh, white opaque, minimum 210/30d (#12) diameter, nylon twine.

(5) It is unlawful to take or fish for salmon with gill net gear when recovery box(es) are required in areas defined under WAC 220-22-030 unless the gill net vessel has aboard and uses said operable recovery box(es) as described in this subsection.

(a) Dimensions and capacities of required recovery boxes:

(i) Recovery boxes must have two chambers, if one box, or one chamber in each box, if two boxes.

(ii) Each recovery box chamber must have an inside length measurement of 48 inches, an inside width measurement of 10 inches, and an inside height measurement of 16 inches.

(iii) Each chamber of the recovery box must have an inlet hole measuring between 3/4 inch and 1 inch in diameter. The inlet hole must be centered horizontally across the door or wall of the chamber, and the bottom of the hole must be located 1-3/4 inches above the floor of the chamber.

(iv) Each chamber of the recovery box must include a water

outlet hole on the opposite wall from the inlet hole, and the outlet hole must be at least 1-1/2 inches in diameter, with the bottom of the outlet hole located 12 inches above the floor of the chamber.

(v) Flow of water through each chamber of the recovery boxes must be not less than 16 gallons per minute, nor more than 20 gallons per minute.

(b) Each box and chamber must be operating during any time that the net is being retrieved or picked.

(c) The vessel operator must demonstrate to department employees, upon request, that the pumping system is delivering the proper volume of fresh seawater into each chamber.

(d) All salmon not to be retained must be released immediately with care and with the least possible injury to the fish, or placed into the operating recovery box.

(e) Any fish that is bleeding or lethargic must be placed in the recovery box prior to being released.

(f) All fish placed in the recovery boxes must be released within the same catch area as the area of capture, and the release must occur prior to landing or docking.

(6) It is unlawful to fish for salmon with gill net gear in Areas 7 and 7A unless the vessel operator has attended a "Fish Friendly" best fishing practices workshop and is in possession of a department-issued certification card.

AMENDATORY SECTION (Amending Order 09-108, filed 7/9/09, effective 8/9/09)

WAC 220-47-307 Closed areas--Puget Sound salmon. It is unlawful at any time, unless otherwise provided, to take, fish for, or possess salmon taken for commercial purposes with any type of gear from the following portions of Puget Sound Salmon Management and Catch Reporting Areas, except that closures listed in this section do not apply to reef net fishing areas listed in RCW 77.50.050:

Areas 4B, 5, 6, 6B, and 6C - The Strait of Juan de Fuca Preserve as defined in WAC 220-47-266.

Area 6D - That portion within 1/4-mile of each mouth of the Dungeness River.

Area 7 - (1) The San Juan Island Preserve as defined in WAC 220-47-262.

(2) Those waters within 1,500 feet of shore on Orcas Island from Deer Point northeasterly to Lawrence Point, thence west to a point intercepting a line projected from the northernmost point of Jones Island, thence 90° true to Orcas Island.

(3) Those waters within 1,500 feet of the shore of Cypress Island from Cypress Head to the northernmost point of Cypress Island.

(4) Those waters easterly of a line projected from Iceberg Point to Iceberg Island, to the easternmost point of Charles Island, then true north from the northernmost point of Charles Island to the shore of Lopez Island.

(5) Those waters northerly of a line projected from the southernmost point of land at Aleck Bay to the westernmost point of Colville Island, thence from the easternmost point of Colville Island to Point Colville.

(6) Those waters easterly of a line projected from Biz Point on Fidalgo Island to the Williamson Rocks Light, thence to the Dennis Shoal Light, thence to the light on the westernmost point of Burrows Island, thence to the southwestern-most point of Fidalgo Head, and including those waters within 1,500 feet of the western shore of Allan Island, those waters within 1,500 feet of the western shore of Burrows Island, and those waters within 1,500 feet of the shore of Fidalgo Island from the southwestern-most point of Fidalgo Head northerly to Shannon Point.

(7) Additional Fraser sockeye and pink seasonal closure: Those waters within 1,500 feet of the shore of Fidalgo Island from the Initiative 77 marker northerly to Biz Point.

(8) Those waters within 1,500 feet of the eastern shore of Lopez Island from Point Colville northerly to Lopez Pass, and those waters within 1,500 feet of the eastern shore of Decatur Island from the southernmost point of land northerly to Fauntleroy Point, and including those waters within 1,500 feet of the shore of James Island.

Area 7A - The Drayton Harbor Preserve as defined in WAC 220-47-252.

Area 7B - ((+1)) That portion south and east of a line from William Point on Samish Island to Saddlebag Island to the southeastern tip of Guemes Island, and that portion northerly of the railroad trestle in Chuckanut Bay.

~~((2) Additional coho seasonal closure: Those waters of Area 7B west of a line from Point Francis (48°41'42"N, 122°36'40"W) to the red and green buoy southeast of Point Francis (48°40'22"N, 122°35'30"W), then to the northernmost tip of Eliza Island (48°39'37"N, 122°35'45"W), then along the eastern shore of the island to a point intersecting a line drawn through Eliza Rock Light (48°38'35"N, 122°34'40"W) and Fish Point (48°34'35"N, 122°29'45"W) and then southeastward along that line to Fish Point.))~~

Area 7C - That portion southeasterly of a line projected from the mouth of Oyster Creek 237° true to a fishing boundary marker on Samish Island.

Area 8 - (1) That portion of Skagit Bay easterly of a line projected from Brown Point on Camano Island to a white monument on the easterly point of Ika Island, thence across the Skagit River to the terminus of the jetty with McGlinn Island.

(2) Those waters within 1,500 feet of the western shore of Camano Island south of a line projected true west from Rocky Point.

Area 8A - (1) Those waters easterly of a line projected from Mission Point to Buoy C1, excluding the waters of Area 8D, thence

through the green light at the entrance jetty of the Snohomish River and across the mouth of the Snohomish River to landfall on the eastern shore, and those waters northerly of a line from Camano Head to the northern boundary of Area 8D.

(2) Additional pink and coho seasonal closure prior to October 3: Those waters southerly of a line projected from the Clinton ferry dock to the Mukilteo ferry dock.

Area 8D - Those waters easterly of a line projected from Mission Point to Hermosa Point.

Area 9 - Those waters lying inside and westerly of a line projected from the Point No Point light to Sierra Echo buoy, thence to Forbes Landing wharf east of Hansville.

Area 10 - (1) Those waters easterly of a line projected from Meadow Point to West Point.

(2) Those waters of Port Madison westerly of a line projected from Point Jefferson to the northernmost portion of Point Monroe.

(3) Additional coho seasonal closure: Those waters of Elliott Bay east of a line from Alki Point to the light at Fourmile Rock, and those waters northerly of a line projected from Point Wells to "SF" Buoy, then west to President's Point.

Area 10E - Those waters of Liberty Bay north of a line projected due east from the southernmost Keyport dock, those waters of Dyes Inlet north of the Manette Bridge, and those waters of Sinclair Inlet southwest of a line projected true east from the Bremerton ferry terminal.

Area 11 - (1) Those waters northerly of a line projected true west from the light at the mouth of Gig Harbor, and those waters south of a line from Browns Point to the northernmost point of land on Point Defiance.

(2) Additional coho seasonal closure: Those waters south of a line projected from the light at the mouth of Gig Harbor to the Tahlequah ferry dock, then south to the Point Defiance ferry dock, and those waters south of a line projected from the Point Defiance ferry dock to Dash Point.

Area 12 - Those waters inside and easterly of a line projected from Lone Rock to the navigation light off Big Beef Creek, thence southerly to the tip of the outermost northern headland of Little Beef Creek.

Area 12A - Those waters north of a line projected due east from Broad Spit.

Area 12B - Those waters within 1/4-mile of the mouths of the Dosewallips, Duckabush, and Hamma Hamma rivers and Anderson Creek.

Areas 12, 12A, and 12B - (1) Those waters within 1,000 feet of the mouth of the Quilcene River.

(2) Additional Chinook seasonal closure: Those waters north and east of a line projected from Tekiu Point to Triton Head.

Areas 12, 12B and 12C - Those waters within 1,000 feet of the eastern shore.

Area 12C - (1) Those waters within 2,000 feet of the western shore between the dock at Glen Ayr R.V. Park and the Hoodsport marina dock.

(2) Those waters south of a line projected from the Cushman

Powerhouse to the public boat ramp at Union.

(3) Those waters within 1/4-mile of the mouth of the Dewatto River.

Areas 12 and 12D - Additional coho and chum seasonal closure: Those waters of Area 12 south and west of a line projected 94 degrees true from Hazel Point to the light on the opposite shore, bounded on the west by the Area 12/12B boundary line, and those waters of Area 12D.

Area 13A - Those waters of Burley Lagoon north of State Route 302; those waters within 1,000 feet of the outer oyster stakes off Minter Creek Bay, including all waters of Minter Creek Bay; those waters westerly of a line drawn due north from Thompson Spit at the mouth of Glen Cove; and those waters within 1/4-mile of Green Point.

AMENDATORY SECTION (Amending Order 09-108, filed 7/9/09, effective 8/9/09)

WAC 220-47-311 Purse seine--Open periods. It is unlawful to take, fish for, or possess salmon taken with purse seine gear for commercial purposes from Puget Sound, except in the following designated Puget Sound Salmon Management and Catch Reporting Areas and during the periods provided for in each respective Management and Catch Reporting Area:

AREA	TIME	DATE
7, 7A:	7AM - 6PM	- (10/12, 10/13, 10/16, 10/17) <u>10/10, 10/11, 10/14, 10/15, 10/18, 10/19, 10/20, 10/21, 10/22, 10/23, 10/24, 10/25, 10/26, 10/27, 10/28, 10/29, 10/30, 10/31, 11/1, 11/2, 11/3, 11/4, 11/5, 11/6</u>
	7AM - 5PM	- (11/1, 11/2, 11/3, 11/4, 11/5, 11/6) <u>11/7, 11/8, 11/9, 11/10, 11/11, 11/12, 11/13</u> (11/14)

Note: In Areas 7 and 7A, it is unlawful to fail to brail when fishing with purse seine gear. Any time brailing is required, purse seine fishers must also use a recovery box in compliance with WAC 220-47-301 (7)(a) through (f).

7B, 7C:	6AM - 9PM	- 8/12)
<u>7B, 7C:</u>	6AM - 8PM	- (8/19, 8/26, 9/2) <u>8/18, 8/25, 9/1</u>
7B:	7AM - 8PM	- (9/9) <u>9/8</u>
	7AM - 7PM	- (9/14, 9/16, 9/18) <u>9/13, 9/15, 9/17</u>
	7AM (9/20) <u>9/19</u>	- 6PM (10/31) <u>10/30</u>
	7AM (11/2) <u>11/1</u>	- 4PM (11/6) <u>11/5</u>
	7AM (11/9) <u>11/8</u>	- 4PM (11/13) <u>11/12</u>
	7AM (11/16) <u>11/15</u>	- 4PM (11/20) <u>11/19</u>
	7AM (11/23) <u>11/22</u>	- 4PM (11/27) <u>11/26</u>

AREA	TIME	DATE
	8AM ((11/30)) 11/29	- 4PM ((11/4)) 12/3

Note: That portion of Area 7B east of a line from Post Point to the flashing red light at the west entrance to Squalicum Harbor is open to purse seines beginning at 12:01 a.m. on the last Monday in October and until 4:00 p.m. on the first Friday in December.

((8:	6AM - 8PM	- 8/17, 8/19, 8/25, 8/27
8A:	6AM - 8PM	- 8/18, 8/20, 8/24, 8/26))
<u>8A:</u>	7AM - 7PM	- Limited participation - two boats ((9/28, 10/5)) <u>9/27, 10/4</u> .
	7AM - 6PM	- ((11/13)) <u>10/11</u>
8D:	7AM - 7PM	- ((9/21, 9/28, 10/5)) <u>9/20, 9/27, 10/4</u>
	7AM - 6PM	- ((10/12, 10/19, 10/26, 10/28)) <u>10/11, 10/18, 10/25, 10/27, 11/3</u>
	7AM - 5PM	- ((11/4, 11/10, 11/12, 11/18)) <u>11/9, 11/11, 11/17</u>
	7AM - 4PM	- ((11/23, 11/25)) <u>11/22, 11/24</u>
((10:	6AM - 8PM	- Limited participation - two boats (8/25, 8/27, 8/31:))
10, 11:	7AM - 6PM	- ((10/20:)) <u>10/18, 10/26, 10/28, 11/1</u>
	7AM - 5PM	- ((11/3:)) <u>11/9, 11/11, 11/15</u>
	7AM - 4PM	- <u>11/23</u>

~~((Note: In Area 10 during any open period occurring from 8/25 through 8/31 it is unlawful to fail to brail when fishing with purse seine gear. Any time brailing is required, purse seine fishers must also use a recovery box in compliance with WAC 220-47-301 (7)(a) through (f). During limited participation fisheries it is unlawful for vessels to take or fish for salmon with department observers on board.))~~

12, 12B:	7AM - 6PM	- ((10/20:)) <u>10/18, 10/26, 10/28, 11/1</u>
	7AM - 5PM	- ((11/3:)) <u>11/9, 11/11, 11/15</u>
12C:	7AM - 5PM	- <u>11/9, 11/11, 11/15</u>
	7AM - 4PM	- <u>11/23</u>

Note: In Areas 12, 12B, and 12C, it is unlawful to take or fish for salmon during any open period with purse seine gear unless purse seine fishers are using a recovery box in compliance with WAC 220-47-301 (7)(a) through (f).

It is unlawful to retain the following salmon species taken with purse seine gear within the following areas during the following periods:

Chinook salmon - at all times in Areas 7, 7A, 8, 8A, 8D, 10, 11, 12, 12B, and 12C, and after October ~~((25))~~ 23 in Area 7B.

Coho salmon - at all times in Areas 7, 7A, 10, and 11, prior to September ~~((6))~~ 5 in Area 7B ~~((, and during September in those waters of Area 7B west of a line from Point Francis (48°41'42"N, 122°36'40"W) to the red and green buoy southeast of Point Francis (48°40'22"N, 122°35'30"W), then to the northernmost tip of Eliza Island (48°39'37"N, 122°35'45"W), then along the eastern shore of the island to a point intersecting a line drawn through through Eliza Rock Light (48°38'35"N, 122°34'40"W) and Fish Point (48°34'35"N, 122°29'45"W) and then southeastward along that line to~~

~~Fish Point~~)), and wild coho in Areas 12, 12B, and 12C.
Chum salmon - prior to October 1 in Areas 7 and 7A.
All other saltwater and freshwater areas - closed.

AMENDATORY SECTION (Amending Order 09-108, filed 7/9/09, effective 8/9/09)

WAC 220-47-401 Reef net open periods. (1) It is unlawful to take, fish for, or possess salmon taken with reef net gear for commercial purposes in Puget Sound, except in the following designated Puget Sound Salmon Management and Catch Reporting Areas, during the periods provided for in each respective area:

AREA	TIME	DATE(S)
7, 7A	5AM - 9PM Daily	(09/13-11/14) 9/12-11/13

(2) It is unlawful at all times to retain wild Chinook salmon taken with reef net gear, and it is unlawful prior to October 1 to retain chum or wild coho salmon taken with reef net gear.

(3) It is unlawful to retain marked Chinook after September 30.

(a) It is unlawful to retain marked Chinook with reef net gear if the fisher does not have in his or her immediate possession a department-issued Puget Sound Reef Net Logbook with all retained Chinook accounted for in logbook. Marked Chinook are those with a clipped adipose fin and a healed scar at the site of the clipped fin.

(b) Completed logs must be submitted and received within six working days to: (~~Jeromy Jording,~~) Puget Sound Commercial Salmon Manager, Department of Fish & Wildlife, 600 Capitol Way N, Olympia WA, 98501-1091.

(4) All other saltwater and freshwater areas - closed.

AMENDATORY SECTION (Amending Order 09-108, filed 7/9/09, effective 8/9/09)

WAC 220-47-411 Gill net--Open periods. It is unlawful to take, fish for, or possess salmon taken with gill net gear for commercial purposes from Puget Sound, except in the following designated Puget Sound Salmon Management and Catch Reporting Areas during the periods provided for in each respective fishing area:

AREA	TIME		DATE(S)	MINIMUM MESH
6D: Skiff gill net only, definition WAC 220-16-046 and lawful gear description WAC 220-47-302.	7AM	-	7PM 9/21, 9/22, 9/23, 9/24, ((9/25;)) 9/27, 9/28, 9/29, 9/30, 10/1, ((10/2;)) 10/4, 10/5, 10/6, 10/7, 10/8, ((10/9;)) 10/11, 10/12, 10/13, 10/14, 10/15, ((10/16;)) 10/18, 10/19, 10/20, 10/21, 10/22((10/23)))	((5-1/2)) 5"

Note: In Area 6D, it is unlawful to use other than 5-inch minimum mesh in the skiff gill net fishery. It is unlawful to retain Chinook taken in Area 6D at any time, or any chum salmon taken in Area 6D prior to October 16. In Area 6D, any Chinook or chum salmon required to be released must be removed from the net by cutting the meshes ensnaring the fish.

7, 7A:	7AM	-	Midnight; use of recovery box required	((10/12, 10/13, 10/16, 10/17)) 10/10, 10/11, 10/14, 10/15	6 1/4"
	7AM	-	Midnight	10/18, 10/19, 10/20, 10/21, 10/22, 10/23, 10/24, 10/25, 10/26, 10/27, 10/28, 10/29, 10/30, 10/31, 11/1, 11/2, 11/3, 11/4, 11/5, 11/6, 11/7, 11/8, 11/9, 11/10, 11/11, 11/12, 11/13((11/14)))	6 1/4"

Note: In Areas 7 and 7A after September ~~((28))~~ 26 but prior to October ~~((18))~~ 17, coho and Chinook salmon must be released, and it is unlawful to use a net soak time of more than 45 minutes. Net soak time is defined as the time elapsed from when the first of the gill net web enters the water, until the gill net is fully retrieved from the water. Fishers must also use a recovery box in compliance with WAC 220-47-302 (5)(a) through (f).

((7B, 7C:))	8PM	-	7AM	NIGHTLY 8/10	7")
7B, 7C:	7PM	-	8AM	NIGHTLY 8/15, 8/17, 8/18, ((8/20;)) 8/22, 8/24, 8/25, ((8/27;)) 8/29, 8/31, 9/1 ((9/3)))	7"
7B:	((12:01)) 7AM	-	((Midnight)) 7 AM the day following	9/6, 9/7, 9/8, ((9/10;)) 9/9, 9/12, 9/13, ((9/15, 9/17)) 9/14, 9/16	5"
	7AM ((9/20)) 9/19	-	Midnight ((10/24)) 10/23		5"
	12:01AM ((10/25)) 10/24	-	Midnight ((10/31)) 10/30		6 1/4"
	7AM ((11/2)) 11/1	-	4PM ((11/6)) 11/5		6 1/4"
	((7AM 11/9)) 6AM 11/8	-	4PM ((11/13)) 11/12		6 1/4"
	((7AM 11/16)) 6AM 11/15	-	4PM ((11/20)) 11/19		6 1/4"
	7AM ((11/23)) 11/22	-	4PM ((11/27)) 11/26		6 1/4"
	8AM ((11/30)) 11/29	-	4PM ((12/4)) 12/3		6 1/4"

Note: That portion of Area 7B east of a line from Post Point to the flashing red light at the west entrance to Squilicum Harbor is open to gill nets using 6 1/4-inch minimum mesh beginning 12:01 AM on the last day in October and until ~~((6:00))~~ 4:00 PM on the first Friday in December.

((8:))	6AM	-	10PM	8/18, 8/20, 8/24, 8/26	5" minimum and 5 1/2" maximum
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Note: In Area 8 it is unlawful to take or fish for pink salmon with drift gill nets greater than 60 mesh maximum depth.

8A:	6AM	-	10PM	8/17, 8/19, 8/25, 8/27	5" minimum and 5 1/2" maximum))
8A:	6PM	-	8AM	NIGHTLY ((10/6)) 10/4	5"
	7AM	-	((6PM)) 8PM	10/12, 10/13, 10/14	5"
8D:	6PM	-	8AM	NIGHTLY 9/19, 9/20, 9/21, 9/22, 9/23, 9/26, 9/27, 9/28, 9/29, 9/30, 10/3, 10/4, 10/5, 10/6, 10/7	5"

AREA	TIME		DATE(S)	MINIMUM MESH	
	<u>5PM</u>	=	<u>8AM</u>	<u>10/10, 10/11, 10/12, 10/13, 10/14</u>	<u>5"</u>
	7AM	-	9PM	<u>9/21, 9/22, ((9/23,)) 9/28, 9/29, ((9/30, 9/6, 9/7)) 10/5, 10/6</u>	5"
	7AM	-	8PM	<u>((10/15, 10/22, 10/29)) 10/12, 10/13, 10/21, 10/28, 11/4</u>	5"
	7AM	-	4PM	<u>((10/16, 10/23, 10/30)) 10/22, 10/29, 11/5</u>	5"
	((7AM)) <u>6AM</u>	-	((7PM)) <u>6PM</u>	<u>((11/11, 11/19)) 11/10, 11/18</u>	6 1/4"
	7AM	-	6PM	<u>((11/26)) 11/25</u>	6 1/4"
	((7AM)) <u>6AM</u>	-	4PM	<u>((11/13, 11/20, 11/27)) 11/12, 11/19</u>	6 1/4"
	<u>7AM</u>	=	<u>4PM</u>	<u>11/26</u>	<u>6 1/4"</u>
9A: Skiff gill net only, <u>definition WAC 220-16-046 and lawful gear description WAC 220-47-302.</u>	7AM	-	7PM	<u>((8/24, 8/25, 8/26)) 8/22 through 10/30 daily</u>	5"
	((6AM 8/30	-	8PM 10/31		5")

Note: It is unlawful to retain chum salmon taken in Area 9A prior to October 1, and it is unlawful to retain Chinook salmon at any time. Any salmon required to be released must be removed from the net by cutting the meshes ensnaring the fish. ~~((Legal gear defined in WAC 220-47-302.~~

10	<u>6AM</u>	-	10PM	<u>Limited participation – two boats (8/24, 8/25, 8/31)</u>	<u>5" minimum and 5 1/2" maximum</u>
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Note: In Area 10 during September coho and Chinook salmon must be released, and it is unlawful to use a net soak time of more than 45 minutes. Net soak time is defined as the time elapsed from when the first of the gill net web enters the water, until the gill net is fully retrieved from the water. Fishers must also use a recovery box in compliance with WAC 220-47-302 (5)(a) through (f):)

10, 11:	5PM	-	9AM	NIGHTLY <u>((10/18, 10/29)) 10/19, 10/24, 11/2</u>	6 1/4"
	5PM	-	8AM	NIGHTLY <u>((10/21)) 10/27</u>	6 1/4"
	4PM	-	8AM	NIGHTLY <u>((11/1, 11/10, 11/12, 11/15)) 11/7, 11/10, 11/16</u>	6 1/4"
	3PM	-	8AM	NIGHTLY <u>((11/22)) 11/21</u>	6 1/4"
	4PM	-	Midnight	NIGHTLY <u>((10/21, 11/4, 11/18, 11/25)) 10/20, 11/3, 11/17, 11/24</u>	6 1/4"
12A: Skiff gill net only, <u>definition WAC 220-16-046 and lawful gear description WAC 220-47-302.</u>	7AM	-	7PM	<u>((9/1, 9/8, 9/15, 9/22, 9/31)) Dates determined per agreement with tribal comanagers in-season if Summer Chum Salmon Conservation Initiative goals are met allowing for openings of gill net gear.</u>	5"

Note: In Area 12A, it is unlawful to use other than 5-inch minimum mesh in the skiff gill net fishery. It is unlawful to retain Chinook or chum salmon taken in Area 12A at any time, and any salmon required to be released must be removed from the net by cutting the meshes ensnaring the fish.

12, 12B:	7AM	-	8PM	<u>10/19, 10/21, 10/25, 10/27, ((10/29)) 11/2, 11/4</u>	6 1/4"
	((7AM)) <u>6AM</u>	-	((7PM)) <u>6PM</u>	<u>((11/2, 11/4,)) 11/8, 11/10, ((11/12,)) 11/16, 11/18</u>	6 1/4"
12C:	((7AM)) <u>6AM</u>	-	((7PM)) <u>6PM</u>	<u>11/8, 11/10, ((11/12,)) 11/16, 11/18</u>	6 1/4"
	7AM	-	6PM	<u>((11/24, 11/26)) 11/22, 11/25</u>	6 1/4"

All other saltwater and freshwater areas - closed.

Nightly openings refer to the start date.

Within an area or areas, a mesh size restriction remains in effect from the first date indicated until a mesh size change is shown, and the new mesh size restriction remains in effect until changed.

WAC 220-47-427 Puget Sound--Beach seine--Emerging commercial fishery--Eligibility--Lawful gear. (1) The Puget Sound beach seine salmon fishery is designated as an emerging commercial fishery for which a vessel is required. An emerging commercial fishery license and an experimental fishery permit are required to participate in this fishery.

(2) The department will issue (~~two~~) four salmon beach seine experimental fishery permits.

(3) The following is the selection process the department will use to offer a salmon beach seine experimental permit.

(a) Persons who held a salmon beach seine experimental fishery permit in the previous management year will be eligible for a permit in the current management year.

(b) The department established a pool of applicants by drawing on August 13, 2002. The pool established by this drawing will be maintained to replace any permit(s) which may be voided.

(4) Permit holders are required to participate in the salmon beach seine experimental fishery.

(a) For purposes of this section, "participation" means the holder of the salmon beach seine experimental permit being aboard the designated vessel in the open fishery.

(b) If the salmon beach seine experimental permit holder fails to participate, the salmon beach seine experimental permit issued to that fisher will be void and a new salmon beach seine experimental permit will be issued through a random drawing from the applicant pool established in 2002.

(c) The department may require proof of participation by maintaining a department approved log book or registering with state officials each day the salmon beach seine experimental permit holder participates.

(d) Persons who participate, but violate conditions of a salmon beach seine experimental permit, will have the permit voided and a new salmon beach seine experimental permit will be reissued through a random drawing from the pool of the voided permit holder.

(5) In Quilcene Bay, chum salmon may not be retained by a salmon beach seine experimental permit holder. Chum salmon in Quilcene Bay must be released alive.

(6) Any person who fails to purchase the license, fails to participate, or violates the conditions of a salmon beach seine experimental permit will have his or her name permanently withdrawn from the pools.

(7) It is unlawful to take salmon with beach seine gear that does not meet the requirements of this subsection.

(a) Beach seine salmon nets in Puget Sound shall not exceed 600 feet in length or 100 meshes in depth, or contain meshes of a size less than 3 inches or greater than 4 inches.

(b) Mesh webbing must be constructed with a twine size no smaller than 210/30d nylon, 12 thread cotton, or the equivalent diameter in any other material.

AMENDATORY SECTION (Amending Order 09-108, filed 7/9/09, effective 8/9/09)

WAC 220-47-428 Beach seine--Open periods. It is unlawful to take, fish for, or possess salmon taken with beach seine gear for commercial purposes from Puget Sound except in the following designated Puget Sound Salmon Management and Catch Reporting Areas during the periods provided hereinafter in each respective Management and Catch Reporting Area:

All areas:

AREA	TIME	DATE(S)
12A:	7AM - 7PM	<u>8/23</u> , 8/24, 8/25, <u>8/26</u> , <u>8/30</u> , 8/31, 9/1, <u>9/2</u> , <u>9/6</u> , 9/7, 9/8, <u>9/9</u> , <u>9/13</u> , 9/14, 9/15, <u>9/16</u> , <u>9/20</u> , 9/21, 9/22, <u>9/23</u> , <u>9/27</u> , 9/28, 9/29, <u>9/30</u>
12H:	7AM - 7PM	November (dates determined per agreement with tribal comanagers in-season if harvestable surplus of salmon remain).

It is unlawful to retain chinook taken with beach seine gear in all areas, and unlawful to retain chum from Area 12A.