PROPOSED RULE MAKING

CR-102 (June 2004)
(Implements RCW 34.05.320)
Do **NOT** use for expedited rule making

Agency: Washington Department of Fish and Wildlife

☒ **Preproposal Statement of Inquiry was filed as WSR** 12-01-104 on 12-21-11; **or**
☐ **Expedited Rule Making--Proposed notice was filed as WSR** _____; **or**
☐ **Proposal is exempt under RCW 34.05.310(4).**

☒ **Original Notice**
☐ **Supplemental Notice to WSR** _____
☐ **Continuance of WSR** _____

Title of rule and other identifying information: (Describe Subject)
WAC 220-36-023, Salmon--Grays Harbor fall fishery,
WAC 220-40-021, Willapa Bay salmon--Summer fishery, and
WAC 220-40-027, Salmon--Willapa Bay fall fishery.

Hearing location(s):
Region 6 Fish and Wildlife Office, Conference Room
48 Devonshire Road
Montesano, WA 98563

Date: Thursday, March 29, 2012 Time: 10:00 - 11:30 a.m.

Date of intended adoption: On or after April 9, 2012
(Note: This is **NOT** the **effective** date)

Submit written comments to:
Name: Rules Coordinator
Address: WDFW Enforcement
600 Capitol Way, N.
Olympia, WA 98501-1091

E-mail: Lori.preuss@dfw.wa.gov
Fax: (360) 902-2155 by (date) March 20, 2012

Assistance for persons with disabilities: Contact Tami Lininger by March 20, 2012 at (360) 902-2267 or at TTY at 1-800-833-6388

Purpose of the proposal and its anticipated effects, including any changes in existing rules: These rules will incorporate the recommendations of the North of Falcon sub-group of the Pacific Fisheries Management Council for taking harvestable numbers of salmon during the commercial salmon fisheries in Willapa Bay and Grays Harbor while protecting species of fish listed as endangered.

Reasons supporting proposal: This rule will protect species of fish listed as endangered while supporting commercial salmon fishing in Willapa Bay and Grays Harbor.

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

Statute being implemented: RCW 77.04.020, 77.12.045, 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:

DATE
February 22, 2012

NAME (type or print)
Lori Preuss

SIGNATURE
Lori Preuss

TITLE
Rules Coordinator

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: February 22, 2012
TIME: 9:24 AM

WSR 12-05-111

(COMPLETE REVERSE SIDE)

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.....	Barbara McClellan	1111 Washington Street, Olympia	(360) 249-1213
Implementation.....	Jim Scott	1111 Washington Street, Olympia	(360) 902-2651
Enforcement.....	Bruce Bjork	1111 Washington Street, Olympia	(360) 902-2373

Has a small business economic impact statement been prepared under chapter 19.85 RCW?

☒ Yes. Attach copy of small business economic impact statement.

A copy of the statement may be obtained by contacting:
Name: Lori Preuss
Address: 600 Capitol Way, N.
Olympia, WA 98501-1091

Phone: (360) 902-2930
Fax: (360) 902-2155
E-mail: Lori.preuss@dfw.wa.gov

☐ No. Explain why no statement was prepared.

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 ( )_____
e-mail _____

☒ No: Please explain: These proposals do not affect hydraulics.

Small Business Economic Impact Statement

1. **Description of the reporting, record keeping, and other compliance requirements of the proposed rule.**

   These rules incorporate the recommendations of the North of Falcon sub-group of the Pacific Fisheries Management Council to take harvestable salmon while protecting species of fish listed as endangered. The rules include legal gear requirements, area restrictions, and open periods for commercial salmon fisheries occurring in Willapa Bay and Grays Harbor.

2. **Kinds of professional services that a small business is likely to need in order to comply with such requirements.**

   None – these rule changes clarify dates for anticipated open periods, show areas in Grays Harbor and Willapa Bay that are closed to commercial harvest methods, and explain legal gear requirements.

3. **Costs of compliance for businesses, including costs of equipment, supplies, labor, and increased administrative costs.**

   None anticipated – these rules are similar to previous years' rules for Willapa Bay and Grays Harbor, and no extra costs of compliance are required.

4. **Will compliance with the rule cause businesses to lose sales or revenue?**

   No.

5. **Cost of compliance for the ten percent of businesses that are the largest businesses required to comply with the proposed rules, using one or more of the following as a basis for comparing costs:**

   1. Cost per employee;
   2. Cost per hour of labor; or
   3. Cost per one hundred dollars of sales.

   There are no anticipated costs of compliance.

6. **Steps taken by the agency to reduce the costs of the rule on small businesses or reasonable justification for not doing so.**

   The Department issues an annual pamphlet and mailer to all license holders to alert them to anticipated open periods, closed areas, and gear requirements.

7. **A description of how the agency will involve small businesses in the development of the rule.**

   The Department co-sponsors the annual North of Falcon process, which is a series of public meetings held over a period of several months from February through April each year. These meetings allow constituents to provide input on the rules contained in this filing.

8. **A list of industries that will be required to comply with the rule.**

   The industry that is required to comply with these rules is composed of all licensed fishers using legal commercial gear types and seeking to harvest salmon in the all-citizen commercial salmon fisheries occurring in Grays Harbor and Willapa Bay.

AMENDATORY SECTION (Amending Order 09-108, filed 5/27/10, effective 6/27/10)

WAC 220-40-021 Willapa Bay salmon--Summer fishery. From July 5 through August 15, it is unlawful to fish for salmon in Willapa Bay for commercial purposes or to possess salmon taken from those waters for commercial purposes((.)), except that:

Fishing periods:

(1) Gillnet gear may be used to fish for salmon and white sturgeon only as shown below. All nonlegal sturgeon, all steelhead, and all other species, including Chinook, coho, chum, and white sturgeon, must be handled with care to minimize injury to the fish and must be released immediately to the river/bay:

Time:	Area:
6:00 a.m. August 6 through 6:00 p.m. August 9, 2012.	Areas 2M, 2N, 2R, 2T, and 2U

Gear:

(2) Gillnet gear restrictions - All areas:

(a) Drift gillnet gear only. It is unlawful to use set net gear. It is permissible to have on board a commercial vessel more than one net, provided the nets are of a mesh size that is legal for the fishery, and the length of any one net does not exceed one thousand five hundred feet in length.

Nets with a mesh size different from that being actively fished must be properly stored. A properly stored net is defined as a net on a drum that is fully covered by a tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope that is 3/8 (0.375) inches or greater.

It is unlawful to use a gillnet to fish for salmon and/or white sturgeon if the lead line weighs more than two pounds per fathom of net as measured on the cork line. This does not supersede the rule for drift gillnets as defined in WAC 220-16-040, where it states that a drift gillnet or drift net gear is defined as a gillnet of single web construction not anchored, tied, staked, placed or weighted in such a manner that it cannot drift.

(b) Mesh size must not exceed nine inches.

(c) Only one net may be fished at a time; other nets must be properly stored.

(d) All nonlegal sturgeon and all steelhead must be handled with care to minimize injury to the fish and must be released immediately to the river/bay when fishing in Willapa Bay Salmon Management Catch Reporting Areas (SMCRA) 2K, 2M, 2N, 2R, 2T, and 2U.

Other:

(3) Quick reporting is required for wholesale dealers and fishers retailing their catch under a "direct retail endorsement." According to WAC 220-69-240(12), reports must be made by 10:00 a.m. the day following landing.

(4) NOAA Fisheries listed the southern population of green sturgeon as threatened under the Endangered Species Act, effective July 6, 2006. Therefore, the retention of green sturgeon is strictly prohibited to protect this federally protected stock.

AMENDATORY SECTION (Amending Order 11-91, filed 6/22/11, effective 7/23/11)

WAC 220-40-027 Salmon--Willapa Bay fall fishery. From August 16 through December 31 of each year, it is unlawful to fish for salmon in Willapa Bay for commercial purposes or to possess salmon taken from those waters for commercial purposes, except that:

Fishing periods:

(1) ((~~Gill net~~)) Gillnet gear may be used to fish for salmon and white sturgeon only as shown below. All nonlegal sturgeon, all steelhead, and all other species including Chinook, coho, chum and white sturgeon, must be handled with care to minimize injury to the fish and must be released immediately to the river/bay:

Time:	Area:
6:00 p.m. August ((~~29~~)) 27 through 6:00 a.m. August ((~~30, 2011~~)) 28, 2012; AND 6:00 p.m. August ((~~31~~)) 29 through 6:00 a.m. ((~~September 1, 2011~~)) August 30, 2012.	**Area 2N** and **Area 2U**
6:00 p.m. September ((~~6~~)) 4 through 6:00 a.m. September ((~~7, 2011~~)) 5, 2012; AND 6:00 p.m. September ((~~8~~)) 6 through 6:00 a.m. September ((~~9, 2011~~)) 7, 2012.	**Area 2N, Area 2R,** and **Area 2U**
6:00 p.m. September ((~~13~~)) 11 through 6:00 p.m. September ((~~22, 2011~~)) 20, 2012.	**Area 2M, Area 2N, Area 2R, Area 2T,** and **Area 2U**

Time:	Area:
6:00 p.m. September ((~~21~~)) 19 through 6:00 p.m. September ((~~22, 2011~~)) 20, 2012;	**Area 2K**
AND	
6:00 p.m. September ((~~28~~)) 26 through 6:00 p.m. September ((~~29, 2011~~)) 27, 2012.	
6:00 p.m. September ((~~24~~)) 22 through 6:00 p.m. September ((~~30, 2011~~)) 27, 2012;	**Area 2M, Area 2N, Area 2R, Area 2T,** and **Area 2U**
6:00 p.m. ((~~October 2~~)) September 30 through 6:00 p.m. October ((~~7, 2011~~)) 5, 2012;	
6:00 p.m. October ((~~10~~)) 8 through 6:00 p.m. October ((~~14, 2011~~)) 12, 2012;	
AND	
12:00 p.m. November 6 through 12:00 p.m. November 30, ((~~2011~~)) 2012.	

Gear:

(2) ((~~Gill net~~)) Gillnet gear restrictions - All areas:

(a) Drift ((~~gill net~~)) gillnet gear only. It is unlawful to use set net gear. It is permissible to have on board a commercial vessel more than one net, provided the nets are of a mesh size that is legal for the fishery, and the length of any one net does not exceed one thousand five hundred feet in length.

Nets with a mesh size different from that being actively fished must be properly stored. A properly stored net is defined as a net on a drum that is fully covered by a tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope that is 3/8 (0.375) inches or greater.

It is unlawful to use a ((~~gill net~~)) gillnet to fish for salmon if the lead line weighs more than two pounds per fathom of net as measured on the cork line, ((~~provided that~~)) but it is ((~~lawful~~)) permissible to have a ((~~gill net~~)) gillnet with a lead line weighing more than two pounds per fathom aboard a vessel when the vessel is fishing in or in transiting through Willapa Bay.

(b) From August 16 through September ((~~12, 2011~~)) 7, 2012: Mesh size must not exceed nine-inch maximum mesh.

(c) From September ((~~13~~)) 11 through September ((~~23, 2011~~)) 20, 2012: Mesh size must not exceed six-inch maximum mesh.

(d) From September ((~~24~~)) 22 through October 31, ((~~2011~~)) 2012: Mesh size must not exceed six and one-half inch maximum

mesh.

(e) From November 6 through November 30, ((~~2011~~)) 2012: Mesh size must ((~~not exceed~~)) be nine-inch minimum mesh, except that from 6:00 p.m. November 11 through 6:00 p.m. November 19, ((~~2011~~)) 2012 (coho directed), there are two alternatives:

(i) Use six and one-half inch maximum mesh; or

(ii) Use nine-inch minimum mesh.

Only one net of either six and one-half inch or nine-inch configuration, not exceeding fifteen hundred feet, may be used when in the act of fishing.

(f) Only one net may be fished at a time; other nets must be properly stored.

(g) Each boat must have two operable recovery boxes or one box with two chambers on board when fishing in Willapa Bay Areas 2K, 2M, 2N, 2R, 2T, and 2U from August 16 through October 31, ((~~2011~~)) 2012. Each box must be operating during any time the net is being retrieved or picked. The flow in the recovery box must be a minimum of 16 gallons per minute in each chamber of the box, not to exceed 20 gallons per minute. Each chamber of the recovery box must meet the following dimensions as measured from within the box: The inside length measurement must be at or within 39-1/2 inches to 48 inches, the inside width measurements must be at or within 8 to 10 inches, and the inside height measurement must be at or within 14 to 16 inches.

Each chamber of the recovery box must include a water inlet hole between 3/4 inch and 1 inch in diameter, centered horizontally across the door or wall of the chamber and 1-3/4 inches from the floor of the chamber. Each chamber of the recovery box must include a water outlet hole opposite the inflow that is at least 1-1/2 inches in diameter. The center of the outlet hole must be located a minimum of 12 inches above the floor of the box or chamber. The fisher must demonstrate to department employees, fish and wildlife enforcement officers, or other peace officers, upon request, that the pumping system is delivering the proper volume of fresh river/bay water into each chamber.

(h) Soak time must not exceed 45 minutes. Soak time is defined as the time elapsed from when the first of the ((~~gill net~~)) gillnet web is deployed into the water until the ((~~gill net~~)) gillnet web is fully retrieved from the water.

(i) From August 16 through September 30, ((~~2011~~)) 2012, all wild (unmarked) Chinook, nonlegal sturgeon, and all steelhead must be handled with care to minimize injury to the fish and must be released immediately to the river/bay or to an operating recovery box when fishing in Willapa Bay Areas 2K, 2M, 2N, 2R, 2T, and 2U.

From October 1 through October 31, ((~~2011~~)) 2012, all wild (unmarked) Chinook, chum, nonlegal sturgeon, and all steelhead must be handled with care to minimize injury to the fish and must be released immediately to the river/bay or to an operating recovery box when fishing in Willapa Bay Areas 2K, 2M, 2N, 2R, 2T, and 2U.

From November 6 through November 30, ((~~2011~~)) 2012, all nonlegal sturgeon and all steelhead must be handled with card to minimize injury to the fish and must be released immediately to the river/bay when fishing in Willapa Bay Areas 2K, 2M, 2N, 2R, 2T, and

2U.

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

(k) All fish placed in recovery boxes must be released to the river/bay prior to landing or docking.

Other:

(3) Quick reporting is required for wholesale dealers and fishers retailing their catch under a "direct retail endorsement." According to WAC 220-69-240(12), reports must be made by 10:00 a.m. the day following landing.

(4) The retention of green sturgeon is prohibited.

(5) It is unlawful to fish with ((~~gill net~~)) gillnet gear in Areas 2K, 2M, 2N, 2R, 2T, and 2U unless the vessel operator has attended a "Fish Friendly" best fishing practices workshop and has in their possession a department-issued certification card.

AMENDATORY SECTION (Amending Order 11-91, filed 6/22/11, effective 7/23/11)

WAC 220-36-023 Salmon--Grays Harbor fall fishery. From August 16 through December 31 of each year, it is unlawful to fish for salmon in Grays Harbor for commercial purposes or to possess salmon taken from those waters for commercial purposes, except that:

Fishing periods:

(1) ((~~Gill net~~)) Gillnet gear may be used to fish for salmon and white sturgeon only according to the chart below. All nonlegal sturgeon, all steelhead, and all other species including Chinook, coho, chum and white sturgeon must be handled with care to minimize injury and must be released immediately to the river/bay:

Time:	Areas:
6:00 p.m. August ((~~18~~)) 16 through 6:00 p.m. August ((~~19, 2011~~)) 17, 2012;	**Area 2C**
6:00 p.m. August ((~~21~~)) 19 through 6:00 p.m. August ((~~22, 2011~~)) 20, 2012;	
6:00 p.m. August ((~~25~~)) 23 through 6:00 p.m. August ((~~26, 2011~~)) 24, 2012;	
6:00 p.m. August ((~~28~~)) 26 through 6:00 p.m. August ((~~29, 2011~~)) 27, 2012;	
6:00 p.m. ((~~September 1~~)) August 30 through 6:00 p.m. ((~~September 2, 2011~~)) August 31, 2012;	
6:00 p.m. September ((~~7~~)) 5 through 6:00 p.m. September ((~~8, 2011~~)) 6, 2012;	
6:00 p.m. September ((~~11~~)) 9 through 6:00 p.m. September ((~~12, 2011~~)) 10, 2012;	
6:00 p.m. September ((~~15~~)) 13 through 6:00 p.m. September ((~~16, 2011~~)) 14, 2012;	
9:30 a.m. October ((~~24~~)) 22 through 7:30 p.m. October ((~~24, 2011~~)) 22, 2012;	
AND	
5:00 a.m. October ((~~25~~)) 23 through 3:00 p.m. October ((~~25, 2011~~)) 23, 2012.	

Time:	Areas:
9:00 a.m. October ((~~8~~)) 6 through 7:00 p.m. October ((~~8, 2011~~)) 6, 2012;	**Area 2A** shall include those waters of Grays Harbor and the Chehalis River estuary upstream from the Highway 101 Bridge at Aberdeen to a line projected from the Lakeside Industries asphalt plant tower at a right angle to the thread of the stream to the opposite shore;
7:00 a.m. October ((~~12~~)) 10 through 5:00 p.m. October ((~~12, 2011~~)) 10, 2012;	
AND	
8:30 a.m. October ((~~18~~)) 16 through 6:30 p.m. October ((~~18, 2011~~)) 16, 2012;	
	AND
	That portion of **Area 2D** lying easterly of a north-south line from the confluence of the Hoquiam and Chehalis rivers to Renney Island, then easterly to "Range Marker G," located on the south shore of Grays Harbor, then to the eastern boundary of **Area 2D** at the Highway 101 Bridge.
8:30 a.m. October ((~~23~~)) 21 through 6:30 p.m. October ((~~23, 2011~~)) 21, 2012;	**Area 2A** shall include those waters of Grays Harbor and the Chehalis River estuary upstream from the Highway 101 Bridge at Aberdeen to a line projected from the Lakeside Industries asphalt plant tower at a right angle to the thread of the stream to the opposite shore;
AND	
7:30 a.m. October ((~~28~~)) 26 through 4:30 p.m. October ((~~28, 2011~~)) 26, 2012.	AND **Area 2D.**

Gear:

(2) ((~~Gill net~~)) Gillnet gear restrictions: All areas:

(a) Drift ((~~gill net~~)) gillnet gear only. It is unlawful to use set net gear. It is permissible to have on board a commercial vessel more than one net, provided the nets are of a mesh size legal for the fishery, and the length of any one net does not exceed one thousand five hundred feet in length.

Nets with a mesh size different from that being actively fished must be properly stored. A properly stored net is defined as a net on a drum that is fully covered by a tarp (canvas or plastic) and bound with a minimum of ten revolutions of rope that is 3/8 (0.375) inches or greater.

It is unlawful to use a ((~~gill net~~)) gillnet to fish for salmon if the lead line weighs more than two pounds per fathom of net as measured on the cork line, ((~~provided that~~)) but it is ((~~lawful~~)) permissible to have a ((~~gill net~~)) gillnet with a lead line weighing more than two pounds per fathom aboard a vessel when the vessel is fishing in or in transiting through Grays Harbor.

(b) From August 16 through September 30, ((~~2011~~)) 2012: In Area 2C, mesh size must ((~~not exceed~~)) be seven and one-half inch minimum to nine-inch maximum.

From October 1 through October ((~~22, 2011~~)) 20, 2012: In

Areas 2A and 2D, mesh size must not exceed six-inch maximum. Nets may be no more than fifty-five meshes deep. Nets must hang straight from top to the bottom. Strings may only be used to secure breakaway panels.

From October ((~~23~~)) 21 through October 31, ((~~2011~~)) 2012: In Areas 2A and 2D, mesh size must not exceed six and one-half inch maximum.

From October ((~~24~~)) 22 through October 31, ((~~2011~~)) 2012: In Area 2C, mesh size must not exceed nine-inch maximum.

(c) Only one net may be fished at a time; other nets must be properly stored.

(d) Soak time must not exceed 45 minutes. Soak time is defined as the time elapsed from when the first of the ((~~gill net~~)) gillnet web is deployed into the water until the ((~~gill net~~)) gillnet web is fully retrieved from the water.

(e) Each boat must have two operable recovery boxes or one box with two chambers on board when fishing Areas 2A, 2C, and 2D. Each box must be operating during any time the net is being retrieved or picked. The flow in the recovery box must be a minimum of 16 gallons per minute in each chamber of the box, not to exceed 20 gallons per minute. Each chamber of the recovery box must meet the following dimensions as measured from within the box: The inside length measurement must be at or within 39-1/2 inches to 48 inches, the inside width measurements must be at or within 8 to 10 inches, and the inside height measurement must be at or within 14 to 16 inches.

Each chamber of the recovery box must include a water inlet hole between 3/4 inch and 1 inch in diameter, centered horizontally across the door or wall of the chamber and 1-3/4 inches from the floor of the chamber. Each chamber of the recovery box must include a water outlet hole opposite the inflow that is at least 1-1/2 inches in diameter. The center of the outlet hole must be located a minimum of 12 inches above the floor of the box or chamber. The fisher must demonstrate to department employees, fish and wildlife enforcement officers, or other peace officers, upon request, that the pumping system is delivering the proper volume of fresh river/bay water into each chamber.

(f) Releases:

(i) All wild (unmarked) coho, nonlegal sturgeon, and all steelhead must be handled with care to minimize injury to the fish and must be released immediately to the river/bay or to an operating recovery box when fishing in Area 2C.

(ii) All Chinook, nonlegal sturgeon, and all steelhead must be handled with care to minimize injury to the fish and must be released immediately to the river/bay or to an operating recovery box when fishing Areas 2A and 2D.

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

(h) All fish placed in recovery boxes must be released to the river/bay prior to landing or docking.

Other:

(3) Quick reporting is required for wholesale dealers and

fishers retailing their catch under a "direct retail endorsement." According to WAC 220-69-240(12), reports must be made by 10:00 a.m. the day following landing.

(4) Fishers must take department observers if requested by department staff when participating in these openings. Pursuant to WAC 220-69-240, fishers also must provide notice of intent to participate by contacting Quick Reporting by phone, fax or e-mail. Notice of intent must be given prior to 12:00 p.m. on August ((~~14, 2011~~)) 13, 2012, for August and September openings, and prior to 12:00 p.m. on October 18 for the October openings in Area 2C. Notice of intent must be given prior to 12:00 p.m. on October ((~~4, 2011~~)) 2, 2012, for the openings in Areas 2A and 2D.

(5) The retention of green sturgeon is prohibited.

(6) It is unlawful to fish for salmon with ((~~gill net~~)) gillnet gear in Areas 2A, 2C, and 2D unless the vessel operator has attended a "Fish Friendly" best fishing practices workshop and has in their possession a department-issued certification card.