



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 13-184

31 days after filing.

Other (specify) 6 a.m. on August 12, 2013 (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: Please see Attachment A.

Purpose: Amends rules for commercial salmon fishing in Willapa Bay. Includes WAC 220-40-021, Salmon—Willapa Bay summer fishery; and WAC 220-40-027, Salmon—Willapa Bay fall fishery.

Citation of existing rules affected by this order:

Repealed:
Amended: WAC 220-40-021 and 220-40-027.
Suspended:

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

Other authority : N/A

PERMANENT RULE (Including Expedited Rule Making)

Adopted under notice filed as WSR 13-06-073 on March 6, 2013 and WSR 13-13-075 on June 19, 2013.
Describe any changes other than editing from proposed to adopted version: N/A.

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: August 6, 2013

NAME (TYPE OR PRINT)

Philip Anderson

SIGNATURE

TITLE

Director

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: August 07, 2013

TIME: 1:02 PM

WSR 13-17-001

(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Federal statute:	New	_____	Amended	_____	Repealed	_____
Federal rules or standards:	New	_____	Amended	_____	Repealed	_____
Recently enacted state statutes:	New	_____	Amended	_____	Repealed	_____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New	_____	Amended	_____	Repealed	_____
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The number of sections adopted in the agency's own initiative:

New	_____	Amended	2	Repealed	_____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

Commercial salmon fishing rules for Willapa Bay, 2013

Other findings required by other provisions of law as precondition to adoption or effectiveness of rule: Pursuant to RCW 34.05.380(3)(c), WDFW finds that an effective date earlier than the normal 31-day time period following the filing of this rule is needed to avoid imminent peril to the public welfare. In the agency's determination, there are significant direct and indirect economic impacts to Willapa Bay fishermen, their families, and that portion of the local economy supported through their activities, that would accrue if the contemplated fishery is not opened on August 12, 2013.

In support of this finding, the agency estimates that the ex-vessel value lost in delaying the start of the commercial fishery for 31 days following filing with the Code Reviser would be approximately \$182,215, or fully one-third the total ex-vessel value of the fishery. In addition to that direct economic loss, there would very likely be indirect, but nonetheless very real, economic losses to the local economy.

If days lost through a delay in starting the commercial fishery were redistributed via a reconfiguration of the September season using emergency rules or modifying the current proposed rules in conformity with RCW 34.05.240, a portion of the loss might be recovered, yielding a net direct loss of approximately \$78,650, or 14% of the estimated ex-vessel value. Additional indirect losses would also remain. In addition, compression of the commercial fishery into early September would further result in unanticipated and unintended consequences for the recreational fishery and the economic benefits that the local economy is expected to receive from that fishery. These losses are not an acceptable alternative and would not fully address the imminent peril to public welfare.

For these reasons, an earlier effective date of August 12, 2013, is established as necessary by these findings.

AMENDATORY SECTION (Amending WSR 12-11-093, filed 5/18/12, effective 6/18/12)

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 coho salmon, white sturgeon, and adipose fin-clipped hatchery Chinook salmon:

Time:	Areas:
6:00 ((p.m.)) a.m. August 12 through ((11:59)) 6:00 p.m. August 15, ((2012)) 2013.	((2M,)) <u>Area 2N, Area 2R, Area 2T, and Area 2U</u>
<u>6:00 a.m. August 12 through 6:00 p.m. August 13, 2013</u>	<u>Area 2M</u>

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.~~

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

It is unlawful to use a gillnet to fish for salmon or white sturgeon if the lead line weighs more than two pounds per fathom of net as measured on the cork line. It is permissible to have a gillnet with a lead line weighing more than two pounds per fathom aboard a vessel when the vessel is fishing in or in transit through Willapa Bay, provided the net is 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.

(b) Mesh size must not exceed nine inches.

Other:

(3) Recovery boxes and soak times:

(a) Each boat must have two operable recovery boxes or one box with two chambers on board when fishing in Willapa Bay Areas 2M, 2N, 2R, 2T, and 2U. 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.

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

(c) 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 an operating recovery box when fishing in Willapa Bay Salmon Management Catch Reporting Areas (SMCRA) 2M, 2N, 2R, 2T, and 2U.

(d) Any steelhead or salmon that is required to be released and is bleeding or lethargic must be placed in the recovery box prior to being released to the river/bay. The recovery box must meet the requirements in (a) of this subsection.

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

(4) Quick reporting is required for wholesale dealers and fishers retailing their catch under a "direct retail endorsement." According to WAC 220-69-240(~~(+12)~~) (14), reports must be made by 10:00 a.m. the day following landing.

(5) Retention of any species other than coho salmon, white sturgeon with a fork length measure of not less than 43 inches and not more than 54 inches, and hatchery Chinook marked by a healed scar at the site of the adipose fin, is prohibited.

(6) Report ALL encounters of wild (unmarked) Chinook, green sturgeon, and steelhead (your name, date of encounter, and number of species encountered) to the quick reporting office via phone at 866-791-1280, fax at 360-249-1229, or e-mail at harborfishtickets@dfw.wa.gov. Fishers may have wholesale dealers use the "buyer only" portion of the fish ticket and have encounters included with each day's quick reporting.

(7) White sturgeon, when lying on their side, are measured

from the tip of the nose to the fork of the tail. This measurement is referred to as the fork length. All white sturgeon to be retained must have a fork-length measure of no less than 43 inches and no more than 54 inches.

(8) Do NOT remove tags from white sturgeon that are not allowed to be retained. For white sturgeon that can be retained, please submit tags to the Washington Department of Fish and Wildlife, 48 Devonshire Rd., Montesano, WA 98563. For white sturgeon not of a legal size and all green sturgeon, obtain available information from tags without removing the tags.

(9) It is unlawful to fish with 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 his or her possession a department-issued certification card.

(10) Fishers must take department observers if requested by department staff when participating in these openings. 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 8, (~~(2012)~~) 2013.

AMENDATORY SECTION (Amending WSR 12-11-093, filed 5/18/12, effective 6/18/12)

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) Gillnet gear may be used to fish for coho salmon, white sturgeon, and adipose fin-clipped hatchery Chinook:

Time:	Area:
((12:00 a.m.)) <u>6:00 p.m.</u> August ((16)) <u>19</u> through 6:00 ((a.m.)) <u>p.m.</u> August ((16, 2012)) <u>20, 2013;</u> 6:00 p.m. August 21 through 6:00 ((a.m.)) <u>p.m.</u> August 22, ((2012)) <u>2013;</u> 6:00 p.m. August 26 through 6:00 a.m. August 27, ((2012)) <u>2013;</u>	((Area 2M, Area)) <u>2N,</u> ((Area)) <u>2R, ((Area 2T,))</u> and ((Area)) <u>2U</u> ((Area 2U)) ((Area 2N, Area 2R, and Area 2U))
AND	
6:00 p.m. August 28 through 6:00 a.m. August 29, ((2012)) <u>2013;</u>	

<p>Time:</p> <p>6:00 p.m. (August 30) <u>September 3</u> through 6:00 a.m. (August 31, 2012) <u>September 4, 2013;</u></p> <p>6:00 p.m. September (4) <u>5</u> through 6:00 a.m. September (5, 2012) <u>6,</u> <u>2013;</u></p> <p>(AND</p> <p>6:00 p.m. September 6 through 6:00 a.m. September 7, 2012;)</p> <p>6:00 p.m. September 9 through 6:00 (a.m.) <u>p.m.</u> September 10, (2012) <u>2013;</u></p> <p><u>AND</u></p> <p>6:00 p.m. September 12 through 6:00 (a.m.) <u>p.m.</u> September 13, (2012) <u>2013;</u></p> <p>((6:00 p.m. September 19 through 6:00 p.m. September 20, 2012;</p> <p>AND</p> <p>6:00 p.m. September 26 through 6:00 p.m. September 27, 2012))</p> <p>6:00 p.m. September 15 through 6:00 p.m. October (13, 2012) <u>12, 2013;</u></p> <p>(AND))</p> <p><u>6:00 p.m. September 15</u> <u>through 5:59 a.m.</u> <u>September 22, 2013;</u></p> <p><u>6:01 p.m. September 22</u> <u>through 5:59 a.m.</u> <u>September 29, 2013;</u></p> <p><u>6:01 p.m. September 29</u> <u>through 5:59 a.m. October</u> <u>6, 2013;</u></p> <p><u>AND</u></p> <p><u>6:01 p.m. October 6</u> <u>through 6:00 p.m. October</u> <u>12, 2013;</u></p>	<p>Area:</p> <p>((Area)) 2M, 2N, 2R, and ((Area)) 2U</p> <p>((Area)) 2N, ((Area)) 2R, and ((Area)) 2U</p> <p>((Area)) 2M, ((Area)) 2N, ((Area)) 2R, ((Area) 2T, east of a line projected from the eastern most upland at Toke Point (approximately 46° 42' 26"N, 123° 57' 58"W) to Goose Point (approximately 46° 38' 12" N, 123° 57' 31" W) then to the eastern boundary at Range Marker "B" (located at 46° 42' 34" N, 123° 51' 18" W;)) and ((Area)) 2U</p> <p>Area 2K</p> <p>((Area)) 2M, ((Area)) 2N, ((Area)) 2R, ((Area)) and 2T((, and Area 2U))</p> <p><u>2U</u></p>
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Time: 12:00 p.m. November 6 through 12:00 p.m. November ~~((30, 2012))~~ 20, 2013.

Area: 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.~~

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

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. It is permissible to have a 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, provided the net is 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.

(b) From August ~~((16))~~ 19 through September 13, ~~((2012))~~ 2013: Mesh size must not exceed nine-inch maximum mesh.

(c) From September 15 through ~~((October 31, 2012))~~ September 22, 2013: Mesh size must not exceed six ~~((and one-half))~~ inch maximum mesh.

(d) From September 23 through October 12, 2013: Mesh size must not exceed six and one-half inch maximum mesh.

(e) From November 6 through November ~~((30, 2012))~~ 20, 2013: ((Mesh size must be nine-inch minimum mesh, except that from 6:00 p.m. November 11 through 6:00 p.m. November 19, 2012 (coho directed),)) There are two alternatives for mesh size:

(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.

Other:

(3) Recovery boxes and soak time:

(a) 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))~~ 19 through October ~~((31, 2012))~~ 12, 2013. 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.

(b) From August ~~((16))~~ 19 through October ~~((31, 2012))~~ 12, 2013, soak time must not exceed 45 minutes. Soak time is defined as the time elapsed from when the first of the gillnet web is deployed into the water until the gillnet web is fully retrieved from the water.

(c) From August ~~((16))~~ 19 through October ~~((31, 2012))~~ 12, 2013, all chum, nonlegal sturgeon, all steelhead, and wild (unmarked) Chinook 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, 2012))~~ 20, 2013, all chum, 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 Areas 2M, 2N, 2R, 2T, and 2U.

(d) Any steelhead or salmon required to be released and is bleeding or lethargic must be placed in the recovery box prior to being released to the river/bay. The recovery box must meet the requirements in (a) of this subsection.

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

(4) Quick reporting is required for wholesale dealers and fishers retailing their catch under a "direct retail endorsement." According to WAC 220-69-240~~((12))~~ (14), reports must be made by 10:00 a.m. the day following landing.

(5) Retention of any species other than coho salmon, white sturgeon with fork length measure not less than 43 inches and not more than 54 inches, and hatchery Chinook marked by a healed scar at the site of the adipose fin is prohibited.

(6) Report ALL encounters of green sturgeon, steelhead, and wild (unmarked) Chinook (your name, date of encounter, and number

of species encountered) to the quick reporting office via phone at 866-791-1280, fax at 360-249-1229, or e-mail at harborfishtickets@dfw.wa.gov. Fishers may have wholesale dealers use the "buyer only" portion of the fish ticket and have encounters included with each day's quick reporting.

(7) White sturgeon, when lying on their side, are measured from the tip of the nose to the fork of the tail. This measurement is referred to as the fork length. All white sturgeon to be retained must have a fork length measure of no less than 43 inches and no more than 54 inches.

(8) Do NOT remove tags from white sturgeon that are not allowed to be retained. For white sturgeon that can be retained, please submit tags to the Washington Department of Fish and Wildlife, 48 Devonshire Rd., Montesano, WA 98563. For white sturgeon not of a legal size and all green sturgeon, obtain available information from tags without removing tags.

(9) It is unlawful to fish with gillnet gear in Areas ((~~2K7~~) 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.

(10) Fishers must take department observers if requested by department staff when participating in these openings. 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 ((~~15, 2012~~)) 13, 2013.