RULE-MAKING ORDER

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

Agency: Washington Department of Fish and Wildlife

Emergency Rule Only

Effective date of rule:
Emergency Rules 10-261
☐ Immediately upon filing.
☒ Later (specify) 6:01 p.m. September 30, 2010

Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?
☐ Yes ☒ No If Yes, explain:

Purpose: Amend commercial fishing rules

Citation of existing rules affected by this order:
Repealed: WAC 220-40-02700L, WAC 220-40-02700M
Amended: WAC 220-40-027
Suspended:

Statutory authority for adoption: RCW 77.12.047 and RCW 77.04.020

Other authority :

EMERGENCY RULE
Under RCW 34.05.350 the agency for good cause finds:
☒ That immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.
☐ That state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.
☐ That in order to implement the requirements or reductions in appropriations enacted in any budget for fiscal years 2009, 2010, or 2011, which necessitates the need for the immediate adoption, amendment, or repeal of a rule, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the fiscal needs or requirements of the agency.

Reasons for this finding: This emergency regulation is needed to meet the original intent of the regulations developed through the 2010 North of Falcon process. The fishery was meant to be continuous from September 12 through October 2, 2010. There is insufficient time to adopt permanent rules.

Date adopted: September 30, 2010

NAME (TYPE OR PRINT)
Philip Anderson

SIGNATURE

TITLE
Director

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: September 30, 2010
TIME: 1:55 PM

WSR 10-20-097

(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Federal statute:	New	_____	Amended	_____	Repealed	_____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 _____

The number of sections adopted in the agency's own initiative:

New 1 Amended _____ Repealed 2

The number of sections adopted in order to clarify, streamline, or reform agency procedures:

New _____ Amended _____ Repealed _____

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	_____

N E W S E C T I O N

WAC 220-40-02700M Salmon -- Willapa Bay fall fishery.
Notwithstanding the provisions of WAC 220-40-027 and 220-40-020, effective 6:01 p.m. September 30, through November 30, 2010, it is unlawful to fish for salmon in Willapa Bay for commercial purposes or to possess salmon or white sturgeon taken from those waters for commercial purposes, except as provided in this section:

Fishing periods and areas:

1. The Tokeland Boat basin is closed to commercial fishing. The Tokeland Boat basin is that portion of SMCRA 2G bounded on the south by the shoreline of the boat basin, on the west by the seawall, and on the north and east by a line from the Tokeland Channel Marker "3" (flashing green, 4-seconds), to Tokeland Channel Marker "4," to the tip of the seawall.

Gill net gear may be used to fish for Chinook, coho, chum, and white sturgeon only as shown below. All non-legal 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.

6:01 p.m. September 30, 2010, through 6:00 p.m. October 2, 2010.	**Area 2G** east of a line projected true south from the most waterward exposed end of the rock jetty located near Washaway Beach, **Area 2H, Area 2J** north of a true east-west line drawn through the North Entrance Marker to the Nahcotta Boat Basin (RF #2), and **Area 2M.**
12:00 p.m. November 6 through 12:00 p.m. November 30, 2010.	**Areas 2G, 2H, 2J, and 2M.**

3. Landing limitations

a. Immediately through through November 30, 2010, all wild (unmarked) coho, non-legal 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 2G, 2H, 2J, 2K, and 2M and including special permit sub-areas 1, 2, 3, and 4.

Gear

4. Gill net gear restrictions - All areas:

a. Drift gill net 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.

b. 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.

c. It is unlawful to use a gill net 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 it is permissible to have a gill net 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.

d. Immediately through October 15, 2010, mesh size must not exceed six and one-half inch maximum mesh.

e. Effective November 6 through November 30, 2010, mesh size must not exceed nine inch minimum mesh.

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

g. Immediately through October 31, 2010, each boat must have two operable recovery boxes or one box with two chambers on board when fishing in SMCRA 2G, 2H, 2J, 2K, and 2M and including special permit sub-areas 1,2,3, and 4. 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.

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

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

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

Other

5.. It is unlawful to fish for salmon with gill net gear in Areas 2G, 2H, 2J, 2K, and 2M unless the vessel operator has attended a department-sponsored “Fish Friendly” best fishing practices workshop.

6. 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.

7. NOAA Fisheries has listed the southern population of green sturgeon as threatened under the Endangered Species Act, effective July 6, 2006. Green sturgeon taken in Washington fisheries may be part of the southern population. Therefore, the retention of green sturgeon is prohibited to protect this federally listed stock.

8. Fishers must take department staff on-board, if requested by WDFW, when participating in these openings to observe fishing operations and/or collect biological data on the catch.

9. Permit-only fishery for Chinook and coho. Only permitted licensees are allowed to participate in this fishery, and they must adhere to all conditions described herein and as outlined in their permit. All gear requirements of the general commercial season described above apply during permit-only fisheries unless otherwise described in the permit.

Specific date and time of permit fishery opening will be described in permit. Those dates will be restricted to, and occur within October 10-12, 2010.

Sub-areas for permit fishery:

Sub-Area	Description
1	Commercial gillnet area 2J: Nahcotta east to Diamond Pt. (46° 29.914′N, 123° 58.888′W), then north to Island Sands Light 54 (46° 32.3′N, 123° 58.6′W) then a true east-west line from Light 54
2	Commercial gillnet area 2M: Northern boundary: Diamond Pt. (46° 29.914′N, 123° 58.888′W), north to Island Sands Light 54 (46° 32.3′N, 123° 58.6′W), then a true east-west line to landfall. Southern Boundary A: North of a true east-west line to landfall from Diamond Point. Southern Boundary B: North of Stanley Point to Paradise Point on NW and from Stanley Point directly NE to landfall.
3	Commercial gillnet Area 2G: Southern boundary: a true east-west line to landfall from Island Sands Light 54 (46° 32.3′N, 123° 58.6′W). Northern boundary: Grassy Island (46° 38′N, 124° 02.2′W) to Goose Pt (46° 38.184′N, 123° 57.584′W)
4	Commercial gillnet Area 2G and 2H: Focus will be near the Willapa Airport between Channel Markers 29 and 35.

10. To facilitate data collection, WDFW personnel must be notified by calling 360/480-5159 a minimum of **6 hours** in advance of landing. Unless otherwise instructed, fishers must provide access to salmon for sampling.

11. When an observer is not on-board, Chinook catch is limited to 100 hatchery Chinook, identified by having a clipped adipose fin and a healed scar in the location of the fin. All legal white sturgeon and hatchery coho, identified by having a clipped adipose fin and a healed scar in the location of the fin, may be retained, except all fishing must cease once 100 hatchery Chinook are brought on-board. No chum may be retained.

12. When an observer is on-board, up to 100 hatchery Chinook, identified by having a clipped adipose fin and a healed scar in the location of the fin, or that are identified as having a coded wire tag by the observer, using a coded wire tag detector, may be retained. All legal white sturgeon and hatchery coho, identified by having a clipped adipose fin and a healed scar in the location of the fin, may be retained, except all fishing must cease once 100 Chinook that have a clipped adipose fin or have a coded wire tag are brought on-board. No chum may be retained.

13. Effective October 10 through October 12, 2010, when an observer is not on-board, Coho catch is limited to 100 fish. All legal white sturgeon may be retained. Up to 100 hatchery Chinook, identified by having a clipped adipose fin and a healed scar in the location of the fin, except all fishing must cease once 100 coho are brought on-board. No chum may be retained.

14. Effective October 10 through October 12, 2010, when an observer is on-board, up to 100 coho may be retained. All legal white sturgeon may be retained. Up to 100 hatchery Chinook, identified by having a clipped adipose fin and a healed scar in the location of the fin, or that are identified as having a coded wire tag by the observer, using a coded wire tag detector, may be retained. All fishing must cease once 100 coho are brought on-board. No chum may be retained.

15. Fishers must maintain a legible, accurate, and complete harvest log for all salmon fishing activity during the permit fishery. A GPS of fishing location(s) must be maintained and provided to the Department such that logs will be received no later than the second day following landing. Logs must be submitted to: WDFW Region 6 Office, Barbara McClellan, 48 Devonshire Rd., Montesano, WA 98563

16. Licensees for this fishery must fish all fishing periods in the area assigned to them, and they must attend a pre-fishery meeting that will be arranged following their selection. The licensees selected to fish sub-area 2 must fish in sections A and B for each fishing period as described in their permit.

R E P E A L E R S

The following section of the Washington Administrative Code is repealed effective 6:01 p.m. September 30, 2010:

WAC 220-40-02700L Salmon—Willapa Bay fall fishery. (10-215)

The following section of the Washington Administrative Code is repealed effective December 1, 2010:

WAC 220-40-02700M Salmon—Willapa Bay fall fishery.

EMERGENCY RULE ONLY

Under RCW 34.05.350 the agency for good cause finds:

☐ (a) That immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.

☐ (b) That state or federal law or federal rule a federal deadline for state receipt of federal funds requires immediate adoption of a rule.

Reasons for this finding: Emergency rule needed to accurately describe number and species allowed for retention during various management periods when permit only fishing is to occur. Language was revised to clarify the requirements for use of recovery boxes and which species may be retained during the general season. There is insufficient time to adopt permanent rules. **(10-261, 9/30/2010)**