



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 10-278

- Immediately upon filing.
- Later (specify) _____

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Repealed:
 Readopted: WAC 220-47-311, WAC 220-47-411
 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: (See Attachment A)

Date adopted: October 15, 2010

NAME (TYPE OR PRINT)
Philip Anderson

SIGNATURE

TITLE
Director

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: October 15, 2010

TIME: 4:10 PM

WSR 10-21-066

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Federal statute:	New	_____	Amended	_____	Repealed	_____
Federal rules or standards:	New	_____	Amended	_____	Repealed	_____
Recently enacted state statutes:	New	_____	Amended	_____	Repealed	_____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New	_____	Amended	_____	Repealed	_____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	_____	Amended	_____	Repealed	_____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

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	_____

Attachment A

The Department of Fish and Wildlife originally adopted 2010 Puget Sound commercial salmon fishing regulations on July 7, 2010. Included within the filing were amendments to WAC 220-47-311 and WAC 220-47-411, which, respectively, set open periods for commercial purse seine and gillnet salmon fishing in Puget Sound, including Management Areas 10 & 11. These rules became effective on August 7, 2010, thirty-one days after filing.

On September 28, 2010, the Washington Court of Appeals published its opinion in *Puget Sound Harvesters Association v. WDFW*, No. 39435-9-II. That case involved a challenge by Puget Sound Harvesters Association to WDFW's 2008 commercial salmon fishing regulations for Areas 10 & 11 (codified in the 2008 version of WAC 220-47-311 -411). The Court of Appeals ruled that the 2008 regulations for Areas 10 & 11 were arbitrary and capricious because WDFW did not sufficiently consider the likely catch share outcome of the regulations, or the implications with respect to two of the Department's management objectives—to “[m]aintain the economic well-being and stability of the fishing industry,” and to “[f]airly allocate harvest opportunity between gear groups.”

WDFW has reevaluated its 2010 regulations for Areas 10 & 11 in light of the Court of Appeals' decision. In conducting this re-evaluation, the department considered its entire official rule-making file for the 2010 regulations. Based on this additional analysis, WDFW has concluded that the substance of the regulations adopted on July 7, 2010 comply with WDFW's management objectives and are otherwise consistent with the Court of Appeals' guidance in its recent decision. Consequently, WDFW is readopting via emergency regulation WAC 220-47-311 and WAC 220-47-411 without change. The basis for WDFW's decision is documented in the agency's rulemaking file.

READOPTED SECTION (Readopting Order 10-137, filed 7/7/10, effective 8/7/10)

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	- 10/10, 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
	7AM - 5PM	- 11/7, 11/8, 11/9, 11/10, 11/11, 11/12, 11/13

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 - 8PM	- 8/18, 8/25, 9/1
7B:	7AM - 8PM	- 9/8
	7AM - 7PM	- 9/13, 9/15, 9/17
	7AM 9/19	- 6PM 10/30
	7AM 11/1	- 4PM 11/5
	7AM 11/8	- 4PM 11/12
	7AM 11/15	- 4PM 11/19
	7AM 11/22	- 4PM 11/26
	8AM 11/29	- 4PM 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.

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

AREA	TIME		DATE(S)	MINIMUM MESH
	7AM	-	4PM 11/5	6 1/4"
	11/1			
	6AM	-	4PM 11/12	6 1/4"
	11/8			
	6AM	-	4PM 11/19	6 1/4"
	11/15			
	7AM	-	4PM 11/26	6 1/4"
	11/22			
	8AM	-	4PM 12/3	6 1/4"
	11/29			

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 gill nets using 6 1/4-inch minimum mesh beginning 12:01 AM on the last day in October and until 4:00 PM on the first Friday in December.

8A:	6PM	-	8AM	NIGHTLY 10/4	5"
	7AM	-	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"
	5PM	-	8AM	10/10, 10/11, 10/12, 10/13, 10/14	5"
	7AM	-	9PM	9/21, 9/22, 9/28, 9/29, 10/5, 10/6	5"
	7AM	-	8PM	10/12, 10/13, 10/21, 10/28, 11/4	5"
	7AM	-	4PM	10/22, 10/29, 11/5	5"
	6AM	-	6PM	11/10, 11/18	6 1/4"
	7AM	-	6PM	11/25	6 1/4"
	6AM	-	4PM	11/12, 11/19	6 1/4"
	7AM	-	4PM	11/26	6 1/4"
9A: Skiff gill net only, definition WAC 220-16-046 and lawful gear description WAC 220-47-302.	7AM	-	7PM	8/22 through 10/30 daily	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.

10, 11:	5PM	-	9AM	NIGHTLY 10/19, 10/24, 11/2	6 1/4"
	5PM	-	8AM	NIGHTLY 10/27	6 1/4"
	4PM	-	8AM	NIGHTLY 11/7, 11/10, 11/16	6 1/4"
	3PM	-	8AM	NIGHTLY 11/21	6 1/4"
	4PM	-	Midnight	NIGHTLY 10/20, 11/3, 11/17, 11/24	6 1/4"
12A: Skiff gill net only, definition WAC 220-16-046 and lawful gear description WAC 220-47-302.	7AM	-	7PM	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.	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	10/19, 10/21, 10/25, 10/27, 11/2, 11/4	6 1/4"
	6AM	-	6PM	11/8, 11/10, 11/16, 11/18	6 1/4"
12C:	6AM	-	6PM	11/8, 11/10, 11/16, 11/18	6 1/4"
	7AM	-	6PM	11/22, 11/25	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.

