



PROPOSED RULE MAKING

CR-102 (June 2012)

(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 13-01-064 on 12/17/12;
 or
 Expedited Rule Making--Proposed notice was filed as WSR _____; or
 Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1).

Original Notice
 Supplemental Notice to WSR 13-06-073
 filed on 03/06/13
 Continuance of WSR _____

Title of rule and other identifying information: (Describe Subject)

WAC 220-36-023, Salmon – Grays Harbor fall fishery.

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

Date: Tuesday, August 6th, 2013 Time: 10:00 – 11:30 a.m.

Date of intended adoption: On or after August 6th, 2013
 (Note: This is NOT the effective date)

Submit written comments to:
 Name: Lori Preuss – Rules Coordinator
 Address: 600 Capitol Way North
 Olympia, WA 98501-1091
 E-mail: Lori.preuss@dfw.wa.gov
 Fax: (360) 902-2155 by (date) July 31, 2013

Assistance for persons with disabilities: Contact
Tami Lininger by July 31, 2013
 (360) 902-2207 or TTY at 1-800-833-6388

Purpose of the proposal and its anticipated effects, including any changes in existing rules:
 This proposal reflects changes from the rules as proposed in WSR 13-06-073, filed on March 6, 2013. This supplemental filing does not include rules for Willapa Bay or river-mouth definitions that were included in WSR 13-06-073 on March 6, 2013, and in WSR 13-13-075 on June 19, 2013. Interested persons can check the status of these rules by using this link, <http://wdfw.wa.gov/about/regulations/development.html>, and selecting “2013 North of Falcon commercial salmon rules for Willapa Bay and Grays Harbor.”

These changes incorporate the recommendations of the North of Falcon sub-group of the Pacific Fisheries Management Council to take harvestable numbers of fish in commercial salmon fisheries in Grays Harbor while protecting species of fish listed as endangered.

Reasons supporting proposal: These rules will protect species of fish listed as endangered while supporting commercial salmon fishing in 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?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Federal Court Decision?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
State Court Decision?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

If yes, CITATION:

DATE
July 3, 2013

NAME (type or print)
Lori Preuss

SIGNATURE

TITLE
Rules Coordinator

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
 STATE OF WASHINGTON
 FILED

DATE: July 03, 2013

TIME: 11:20 AM

WSR 13-14-123

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..... Mike Scharpf	48 Devonshire Rd., Montesano, WA 98563	(360) 249-1213
Implementation.... James Scott	1111 Washington Street SE, Olympia, WA 98504	(360) 902-2651
Enforcement..... Bruce Bjork	1111 Washington Street SE, Olympia, WA 98504	(360) 902-2373

Has a small business economic impact statement been prepared under chapter 19.85 RCW or has a school district fiscal impact statement been prepared under section 1, chapter 210, Laws of 2012?

Yes. Attach copy of small business economic impact statement or school district fiscal impact statement.

A copy of the statement may be obtained by contacting:

Name: Lori Preuss, WDFW Enforcement

Address: 600 Capital Way North
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

2013 Commercial salmon fishing, Grays Harbor

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 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 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 Grays Harbor and do not require extra costs to comply.

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.

9. An estimate of the number of jobs that will be created or lost as the result of compliance with the proposed rule.

The Department does not anticipate more than a few jobs, if any, being created or lost as a result of compliance with the proposed rule. The workforce tends to be static for licensed fishers who participate in the all-citizen commercial salmon fisheries occurring in Grays Harbor.

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

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) Gillnet gear may be used to fish for Chinook, coho, chum salmon, and white sturgeon as provided for in ((subsections (6) and (7) of)) this section and in the times and area identified in the chart below.

Time:	Areas:
((6:00 p.m. August 19 through 6:00 p.m. August 20, 2012;	Area 2C
6:00 p.m. August 23 through 6:00 p.m. August 24, 2012;	
6:00 p.m. August 27 through 6:00 p.m. August 28, 2012;	
6:00 p.m. August 29 through 6:00 p.m. August 30, 2012;	
6:00 p.m. September 5 through 6:00 p.m. September 6, 2012;	
AND	
6:00 p.m. September 28 through 6:00 p.m. September 29, 2012.))	
6:00 a.m. October ((1)) <u>7</u> through 6:00 p.m. October ((1, 2012)) <u>7</u> , 2013;	((Area)) 2A and that portion of 2D lying easterly of a north-south line from the confluence of the Hoquiam River and Chehalis River estuary to Renney Island, then easterly to "Range Marker G" located on the south shore of Grays Harbor, then to the eastern boundary of 2D at the Highway 101 Bridge.
6:00 a.m. October ((2)) <u>8</u> through 6:00 p.m. October ((2, 2012)) <u>8</u> , 2013;	
6:00 a.m. October ((12)) <u>14</u> through 6:00 p.m. October ((12, 2012)) <u>14</u> , 2013;	
6:00 a.m. October 22 through 6:00 p.m. October 22, 2013;	((AND))
6:00 a.m. October 24 through 6:00 p.m. October 24, 2013;	
AND	
6:00 a.m. October ((14)) <u>29</u> through 6:00 p.m. October ((14, 2012)) <u>29</u> , 2013.	((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.))
6:00 a.m. October ((19)) <u>30</u> through 6:00 p.m. October ((19, 2012;)) <u>30</u> , 2013.	((Area)) 2A and ((Area)) 2D.
((6:00 a.m. October 20 through 6:00 p.m. October 20, 2012;	
AND	
6:00 p.m. October 21 through 6:00 p.m. October 22, 2012.))	

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 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 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 transiting through Grays Harbor.~~

~~(b) From August 16 through September 30, 2012: In Area 2C, mesh size must not exceed eight and one half inch maximum.~~

~~(c) From October 1 through October 31, 2012: In Areas 2A and 2D, mesh size must not exceed six and one half inch maximum. Nets may be no more than fifty five meshes deep.)) It is permissible to have on board a commercial vessel more than one net, provided that the length of any one net does not exceed one thousand five hundred feet in length. Nets not specifically authorized for use in this fishery may be onboard the vessel if 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) Areas 2A and 2D from October 1 through October 30, 2013, tangle net gear only. Single-wall nets are required. Maximum mesh size must not exceed four and one-quarter inches. Mesh size is determined by placing three consecutive meshes under hand tension and taking the measurement from the inside of one vertical knot to the outside of the opposite vertical knot of the center mesh. Hand tension means sufficient linear tension to draw opposing knots of meshes into contact. Strings/slackers are required, and nets may hang no more than 28 feet from cork line to lead line. It is unlawful to use set net gear. Net construction must include sufficient floatation to ensure the cork line remains at the surface when in the act of fishing.

Other:

(3) Recovery boxes and soak times:

(a) For Areas 2A and 2D, 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.

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

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

(d) Each boat must have two operable recovery boxes or one box with two chambers on board when fishing Areas 2A 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.

(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), reports must be made by 10:00 a.m. the day following landing.

(5) 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, for openings in Area 2C.~~) Notice of intent must be given prior to 12:00 p.m. on September (~~26, 2012~~) 23, 2013, for openings in Areas 2A and 2D.

(6) (~~Retention of any species other than Chinook, coho, and chum, and white sturgeon with a fork length measure of not less than 43 inches and not more than 54 inches, is prohibited in Area 2C.~~

(7) ~~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 in Areas 2A and 2D from October 1 through October 20, 2012.~~) Retention of any species other than coho(~~(,)~~) or chum, or white sturgeon with a fork length measure of not less than 43 inches and not more than 54 inches, (~~and~~) or hatchery Chinook marked by a healed scar at the site of the adipose fin, is prohibited in Areas 2A and 2D from October (~~21~~) 1 through (~~October 24, 2012~~) November 30, 2013.

(~~8~~) (7) 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 include encounters with each day's quick reporting.

(~~9~~) (8) 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.

(~~10~~) (9) 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.

((~~11~~)) (10) It is unlawful to fish for salmon with tangle net or gillnet gear in Areas 2A, 2C, and 2D 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.