



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 13-227

31 days after filing.

Other (specify) _____ (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 Grays Harbor. Includes WAC 220-36-023, Salmon—Grays Harbor fall fishery.

Citation of existing rules affected by this order:

Repealed:

Amended: WAC 220-36-023.

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 13-14-123 on July 3, 2013.

Describe any changes other than editing from proposed to adopted version: The adopted version of this rule includes changes from the rule as proposed in WSR 13-14-123, filed on July 3, 2013. These changes and the rationale behind them are described in detail in Attachment 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: September 9, 2013

NAME (TYPE OR PRINT)

Philip Anderson

SIGNATURE

TITLE

Director

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: September 09, 2013

TIME: 5:09 PM

WSR 13-19-027

(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Federal statute:	New	_____	Amended	_____	Repealed	_____
Federal rules or standards:	New	_____	Amended	_____	Repealed	_____
Recently enacted state statutes:	New	_____	Amended	_____	Repealed	_____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New	_____	Amended	_____	Repealed	_____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New	_____	Amended	1	Repealed	_____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 Grays Harbor, 2013

Other findings required by other provisions of law as precondition to adoption or effectiveness of rule:

Pursuant to RCW 34.05.340(3), notice is hereby provided that the adopted rule amending WAC 220-36-023 varies in substance from the last supplemental notice of rule-making filed in WSR 13-14-123 on July 3, 2013.

The general subject matter of the rule being adopted is the same as that of the proposed rule (the adopted rule opens and regulates commercial fishing for Chinook, coho and chum salmon in Grays Harbor, together with incidental harvest of white sturgeon). The adopted rule varies only in the specifications for gear, area, dates, and time when commercial salmon fisheries will occur in Grays Harbor. Daily openings in Areas 2A and 2D during October will occur 7:00 a.m. – 7:00 p.m. (12 hours), and during November, the openers are 2 consecutive 48-hour periods that open and close at 6:00 p.m. In Area 2C, daily openings will occur 7:00 a.m. – 7:00 p.m. (12 hours). The following is a side-by-side comparison of the two alternatives.

Areas 2A and 2D:	Proposed Rule	Alternative Rule Adopted
Week beginning (statistical week):		
(41) October 6	2 (tangle net)	1 (tangle net)
(42) October 13	1 (tangle net)	0
(43) October 20	2 (tangle net)	2 (gillnet gear)
(44) October 27	2 (tangle net)	1 (gillnet gear)
(45) November 3	0	2 (gillnet gear)
(46) November 10	0	2 (gillnet gear)
Total openings (hours)	7 (84 hours)	8 (144 hours)
Area 2C:		
WDFW Proposal		
Alternative		
Week beginning (statistical week):		
(44) October 27	0	2 (gillnet gear)
(45) November 3	0	1 (gillnet gear)
(46) November 10	0	1 (gillnet gear)
Total openings (hours)	0 (0 hours)	4 (48 hours)

In support of the decision to make substantive changes to the proposed rule, the agency has determined that the rule being adopted will achieve conservation objectives, promote the well-being and stability of the state's fishing industry, and allow a sustainable level of harvest as described in the Grays Harbor Salmon Management Plan. The principal reason for adopting the changes is that they are responsive to comments provided by commercial industry representatives during the last comment period associated with the rule making process, while maintaining appropriate conservation and harvest opportunity allocation objectives. The proposed change reflects a desire to provide a wider array of fishing opportunities to reduce the

risk of economic loss to commercial harvesters if factors like weather or the geographic distribution of returning salmon is different than anticipated. To achieve a more diverse set of fishing options, changes to location, timing and allowable gear types were proposed. The Department's proposed rule also reflected a desire to explore the use of tangle nets in Grays Harbor. While the proposed changes reduce the number of tangle-net harvest periods and provides gillnet opportunity, tangle-net harvesting remains in place. Upon reflection, the Department concluded that a reduced level of tangle-net harvesting this year would facilitate active monitoring and assessment of that newer gear type. The proposal diversifies commercial opportunity by area and time, thus spreading harvest-related impacts across the return timing of chum and coho. No negative impacts to recreational harvest opportunity were identified. Most importantly, the adopted rule, as revised, remains consistent with conservation objectives. The combined changes were found to produce slightly better conservation outcomes. A more detailed discussion of these considerations may be found in the Concise Explanatory Statement prepared for this rule.

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 through 6:00 p.m. October 1, 2012;	Area 2A
6:00 a.m. October 2 through 6:00 p.m. October 2, 2012;	and
6:00 a.m. October 12 through 6:00 p.m. October 12, 2012;	
AND	
6:00 a.m. October 14 through 6:00 p.m. October 14, 2012.	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 through 6:00 p.m. October 19, 2012;	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.	
<u>7:00 a.m. October 10 through 7:00 p.m. October 10, 2013;</u>	<u>Area 2A and that portion of Area 2D lying easterly of a north-south line from the confluence of the Hoquiam (N 46.96978, W 123.88022) 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.</u>
<u>7:00 a.m. October 24 through 7:00 p.m. October 24, 2013;</u>	<u>Area 2A and Area 2D.</u>

Time: 7:00 a.m. October 25 through 7:00 p.m. October 25, 2013;
7:00 a.m. October 29 through 7:00 p.m. October 29, 2013;
6:00 p.m. November 7 through 6:00 p.m. November 9, 2013; and
6:00 p.m. November 10 through 6:00 p.m. November 12, 2013.
7:00 a.m. November 1 through 7:00 p.m. November 1, 2013; Area 2C
7:00 a.m. November 2 through 7:00 p.m. November 2, 2013;
7:00 a.m. November 6 through 7:00 p.m. November 6, 2013; and
7:00 a.m. November 14 through 7:00 p.m. November 14, 2013.

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 15, 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.

(c) Areas 2A and 2D from October 16 through November 30, 2013. Gillnet gear ONLY. It is unlawful to use set net gear. Mesh size must not exceed six and one-half inch maximum. Nets may be no more than fifty-five meshes deep.

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.

(d) Area 2C August 16 through November 30, 2013, gillnet gear ONLY. It is unlawful to use set net gear. Mesh size must not exceed eight and one-half inch maximum.

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.

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+)) (14), 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~~) October 4, 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.

(7) 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.

(8) 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) 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) 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) 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.