



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 14-02-113 on 12-31-13;
 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 _____
 Continuance of WSR _____

Title of rule and other identifying information: (Describe Subject)
 WAC 220-36-023, Grays Harbor fall fishery.

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

Date: August 26, 2014 Time: 1:00 p.m. – 3:00 p.m.

Submit written comments to:
 Name: Joanna Eide, WDFW Rules Coordinator
 Address: 600 Capitol Way North
 Olympia, WA 98501-1091
 E-mail: Rules.Coordinator@dfw.wa.gov
 Fax: (360) 902-2155 by (date) August 19, 2014

Assistance for persons with disabilities: Contact
Tami Lininger by August 19, 2014
 (360) 902-2207 or TTY at 1-800-833-6388

Date of intended adoption: On or after August 26, 2014
 (Note: This is NOT the effective date)

Purpose of the proposal and its anticipated effects, including any changes in existing rules:
 These proposed rule changes incorporate the recommendations of the North of Falcon sub-group of the Pacific Fisheries Management Council for taking harvestable numbers of salmon during the commercial salmon fisheries in Grays Harbor, while protecting species of fish listed as endangered.

Reasons supporting proposal: These proposed rule changes will protect species of fish listed as endangered while supporting commercial salmon fishing in Grays Harbor.

Statutory authority for adoption: RCW 77.04.012, 77.04.020, 77.12.045, and 77.12.047

Statute being implemented: RCW 77.04.012, 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 23, 2014

NAME
 Joanna Eide

SIGNATURE

TITLE
 Rules Coordinator

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
 STATE OF WASHINGTON
 FILED

DATE: **July 23, 2014**

TIME: **8:22 AM**

WSR 14-15-139

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.....	Barbara McClellan	48 Devonshire Rd., Montesano, WA 98563	(360) 249-1213
Implementation....	James Scott	1111 Washington Street SE, Olympia, WA 98504	(360) 902-2651
Enforcement.....	Steve Crown	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: Joanna Eide, WDFW Rules Coordinator

Address: 600 Capital Way North
Olympia, WA 98501-1091

Phone (360) 902-2930

Fax (360)902-2155

E-mail Rules.Coordinator@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: This proposal does not involve hydraulics.

Small Business Economic Impact Statement (SBEIS)

Commercial salmon fishing, Grays Harbor, 2014

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 in Grays Harbor while taking reasonable and prudent measures to protect local salmon and steelhead stocks of concern and non-local species of fish listed under the federal Endangered Species Act as threatened or 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. There are no anticipated professional services required to comply.

3. Costs of compliance for businesses, including costs of equipment, supplies, labor, and increased administrative costs.

The proposed rules are similar to previous years and primarily only adjust opening and closing dates. The proposed rules do not require any additional equipment, supplies, labor, or administrative costs. Therefore, there is no additional cost to comply with the proposed rules.

4. Will compliance with the rule cause businesses to lose sales or revenue?

The proposed rules do not affect the harvestable numbers of salmon available to commercial fisher licensed to fish in Grays Harbor. Therefore, the proposed rules should not cause any businesses to lose sales or revenue.

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.**

The proposed rules do not require any additional equipment, supplies, labor, or administrative costs. Therefore no costs for compliance are anticipated.

6. Steps taken by the agency to reduce the costs of the rule on small businesses or reasonable justification for not doing so.

Most businesses affected by these rules are small businesses. As indicated above, all of the gear restrictions proposed by the rules are identical to gear restrictions the Washington Department of Fish and Wildlife (WDFW) has required in past salmon fishery seasons. Therefore, the gear restrictions will not impose new costs on small businesses.

7. A description of how the agency will involve small businesses in the development of the rule.

As in previous years, WDFW interacts with and receives input from affected businesses through the North of Falcon process, which is a series of public meetings occurring from February through April each year. These meetings allow small businesses to participate in formulating these rules.

8. A list of industries that will be required to comply with the rule.

All licensed fishers attempting to harvest salmon in the all-citizen commercial salmon fisheries occurring in Grays Harbor will be required to comply with these rules.

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

As explained above, these rules impose similar requirements to those for previous years' commercial salmon fisheries. Compliance with the rules will not result in the creation or loss of jobs.

AMENDATORY SECTION (Amending WSR 13-19-027, filed 9/9/13, effective 10/10/13)

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, and chum salmon(~~(, and white sturgeon)~~), and shad as provided (~~((for))~~) in this section and in the times and area identified in the chart below.

Time:	Areas:
((7:00 a.m. October 10 through 7:00 p.m. October 10, 2013;	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.
7:00 a.m. October 24 through 7:00 p.m. October 24, 2013;	Area 2A and Area 2D.
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;))	
<u>12:00 p.m. October 1 through 11:59 p.m. October 1;</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>
6:00 a.m. October 22 through 6:00 p.m. October 22;	Area 2A and Area 2D
7:00 a.m. October 29 through 7:00 p.m. October 29;	
5:00 p.m. November 3 through 5:00 p.m. November 5;	
<u>AND</u>	
<u>12:00 p.m. November 11 through 11:59 p.m. November 12.</u>	
<u>12:00 p.m. October 28 through 11:59 p.m. October 29;</u>	Area 2C
<u>12:00 p.m. November 4 through 11:59 p.m. November 5;</u>	

Time:

Areas:

AND

12:00 p.m. November 12 through
11:59 p.m. November 12.

Gear:

(2) Gear restrictions:

(a) 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 in diameter or greater.

(b) Areas 2A and 2D from October 1 through October (~~15, 2013~~) 10, tangle net gear only.

(i) It is unlawful to use set net gear.

(ii) Single-wall nets are required.

(iii) 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.

(iv) 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.))~~

(v) 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~~) 11 through November 30 (~~2013~~), gillnet gear only.

(i) It is unlawful to use set net gear.

(ii) Mesh size must not exceed six and one-half inch maximum. Nets may be no more than fifty-five meshes deep.

(iii) 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~~) from October 1 through November 30 (~~2013~~), gillnet gear only.

(i) It is unlawful to use set net gear.

(ii) Mesh size must not exceed (~~eight and one-half inch maximum~~) nine inches.

(iii) 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) Each boat must have two operable recovery boxes or one box with two chambers on board when fishing Areas 2A, 2C, and 2D.

(i) Each box and chamber 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.

(ii) Each chamber of the recovery box must meet the following dimensions as measured from within the box:

(A) The inside length measurement must be at or within 39-1/2 inches to 48 inches;

(B) The inside width measurements must be at or within 8 to 10 inches; and

(C) The inside height measurement must be at or within 14 to 16 inches.

(iii) 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 or bay water into each chamber.

(b) When fishing in Grays Harbor Areas 2A and 2D, all steelhead and wild (unmarked) Chinook must be placed in an operating recovery box which meets the requirements in (a) of this subsection prior to being released to the river/bay as set forth in (d) of this subsection.

(c) When fishing in Grays Harbor Area 2C, all steelhead and wild (unmarked) coho must be placed in an operating recovery box which meets the requirements in (a) of this subsection prior to being released to the river/bay as set forth in (d) of this subsection.

(d) All fish placed in recovery boxes must remain until they are not lethargic and not bleeding and must be released to the river or bay prior to landing or docking.

(e) For Areas 2A, 2C, 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) Retention of any species other than coho, chum, hatchery Chinook marked by a healed scar at the site of the adipose fin, or shad is prohibited in Areas 2A and 2D from October 1 through November 30.

(5) Retention of any species other than Chinook, chum, or hatchery coho marked by a healed scar at the site of the adipose fin, or shad, is prohibited in Area 2C from October 1 through November 30.

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

((+5)) (7) Report all encounters of green sturgeon 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.

(8) Do NOT remove tags from white or green sturgeon. Please obtain available information from tags without removing tags. Submit tag information to:

Washington Department of Fish and Wildlife
48 Devonshire Rd.
Montesano, WA 98563.

(9)(a) Fishers must take department observers, if requested, by department staff when participating in these openings.

(b) 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 ((October 4, 2013)) September 22, for openings in Areas 2A ((and)), 2C, or 2D.

((+6) 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, or 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 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))~~ (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.