



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 15-01-157 on 12/23/14;
 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 15-12-115
 Continuance of WSR _____

Title of rule and other identifying information: (Describe Subject)
WAC 220-40-027, Salmon – Willapa Bay fall fishery.

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

Date: Aug 4, 2015 Time: 3:00-4:00 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) Aug 4, 2015

Assistance for persons with disabilities: Contact
Tami Lininger by Aug 1, 2015
 (360) 902-2207 or TTY at 1-800-833-6388

Date of intended adoption: On or after Aug 4, 2015
(Note: This is NOT the effective date)

Purpose of the proposal and its anticipated effects, including any changes in existing rules:
These rules 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 Willapa Bay, while protecting species of fish listed as endangered.

WAC 220-40-047 is modified from the original filing due to adoption of Willapa Bay Salmon Management Policy by the Fish and Wildlife Commission. This regulation has a 20% harvest rate on Willapa River and Naselle River natural-origin Chinook whereas the original filing had a 14% harvest rate.

Reasons supporting proposal: This rule change will protect salmon species while supporting commercial salmon fishing in Willapa Bay.

Statutory authority for adoption: RCW 77.04.012, 77.04.020, 77.04.055, 77.12.045, and 77.12.047

Statute being implemented: RCW 77.04.012, 77.04.020, 77.04.055, 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:

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: **July 01, 2015**

TIME: **10:24 AM**

WSR 15-14-124

DATE
July 1, 2015

NAME
Joanna Eide

SIGNATURE

TITLE
Rules Coordinator

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..... Steve Thiesfeld | 48 Devonshire Rd., Montesano, WA 98563 | (360) 249-1201 |
| 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: Barbara McClellan
Address: 48 Devonshire Road
Montesano, WA 98563
Phone (360) 249-4628 x1213
Fax (360) 249-1229
E-mail Barbara.McClellan@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.

Attachment 1

Small Business Economic Impact Statement Commercial salmon fishing, Willapa Bay, 2015

1. Description of the reporting, record keeping, and other compliance requirements of the proposed rule:

These rules will 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, marine mammals, and sea birds listed as endangered. The rules include legal gear requirements, area restrictions, and open periods for commercial salmon fisheries occurring in Willapa Bay.

2. Kinds of professional services that a small business is likely to need in order to comply with such requirements:

These rule changes clarify dates for anticipated open periods and areas for full-fleet and limited-participation salmon fisheries, and legal gear requirements for those fisheries.

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

The changes proposed by these rules that carry potential compliance costs include gear restrictions during certain days in area 2U. WAC 220-40-027 specifies gill net mesh requirements of 4.25” maximum for salmon fisheries in Catch Areas 2U on September [16, 17, 18, 19](#), 20, 21, 22, 27, 28, and 29. This gear restriction is similar to gear restrictions the Department has proposed in the past for Willapa Bay and Grays Harbor salmon fisheries; and currently used in the Columbia River. Because some license holders fish the Columbia River and/or Grays Harbor, they have already acquired this gear. Other license holders will be required to obtain the gear if they choose to fish in 2U on the aforementioned dates. In addition, this cost can be amortized over years as the net should last for several years. Cost of compliance is estimated at \$4,000 to \$5,000.

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 non-treaty fleets. Therefore, the proposed rules should not cause any businesses to lose sales or revenue.

5. Cost of compliance for small businesses compared with the 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 only metric available to the department for identifying the largest ten percent of businesses, or for use in a cost comparison for small and large businesses, is the ex-vessel value of salmon sold by

each Puget Sound salmon commercial license in recent years. This ex-vessel value is used as a surrogate for sales in this analysis, but it is an underestimate of total sales, since the majority of the businesses affected have additional revenue from other fisheries and related ventures. In addition, this analysis assumes that all license holders will be required to purchase equipment described above. However, some license holders already own gear that meets the requirements, and will not be required to purchase new gear. These two factors combined mean that the cost of compliance per one hundred dollars of sales will be overestimated for small and large businesses. Also note that each individual license was treated as a business for this analysis, although some businesses own more than one license.

There were approximately 61 Willapa Bay salmon licenses that participated in the Willapa Bay fishery in 2014. The cost of compliance will vary between license types, but the average cost per license is approximately \$4,500, assuming that all license holders will be required to spend the amounts described above. For the 10% of licenses with the highest ex-vessel sales values for 2014 combined, the average ex-vessel value per year was \$46,762. This means that the cost of compliance per \$100 of ex-vessel value would be \$9.62. Most businesses affected by these rules qualify as small businesses, so an average cost of compliance for all businesses was calculated for comparison. The average ex-vessel value per year for all licenses for 2014 was \$18,840, meaning the average cost of compliance would be \$23.89 per \$100 of ex-vessel value. Again, both of these estimates of cost of compliance are believed to be overestimates, for the reasons described above.

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, the gear restrictions proposed by the rules apply to Columbia River salmon fisheries, and are identical to gear restrictions the Department has required in past Willapa Bay and Grays Harbor salmon fishery seasons.

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

As in previous years, WDFW interacted with and received 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 allowed constituents 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 Willapa Bay 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 used in other salmon fisheries. Compliance with the rules will not result in the creation or loss of jobs.

WAC 220-40-027 Salmon—Willapa Bay fall fishery. From August 16 through December 31 of each year, it is unlawful to fish for salmon in Willapa Bay 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 coho salmon, chum salmon, and Chinook salmon:

| (Time: | Area: |
|--|--|
| 7:00 p.m. August 25 through 7:00 a.m. August 26; | 2N and 2U |
| 7:00 p.m. September 1 through 7:00 a.m. September 2; | |
| 7:00 p.m. September 7 through 7:00 a.m. September 8; | |
| 7:00 p.m. September 8 through 7:00 a.m. September 9; | |
| 7:00 p.m. September 9 through 7:00 a.m. September 10; | |
| 7:00 p.m. September 10 through 7:00 a.m. September 11; | |
| AND | |
| 7:00 p.m. September 14 through 7:00 a.m. September 15; | |
| 6:00 p.m. September 15 through 6:00 p.m. September 19; | 2M, 2N, 2R, and 2T (except those waters of 2T north of a line from Toke Point channel marker 3 easterly through Willapa Harbor channel marker 13 (green), then northeasterly to the power transmission pole located at 46°43.1907'N; 123°50.83134'W) |
| 6:00 p.m. September 22 through 6:00 p.m. September 26; | |
| AND | |
| 6:00 p.m. September 28 through 6:00 p.m. September 30; | |
| 6:00 p.m. September 15 through 6:00 p.m. September 18; | 2U |
| 6:00 p.m. September 22 through 6:00 p.m. September 25; | |

((Time: Area:
AND
6:00 p.m. September 28
through 6:00 p.m. October
2;
6:00 p.m. September 30
through 6:00 p.m. October
3. **2M, 2N, 2R, and 2T**
6:00 p.m. October 4
through 6:00 p.m. October
7; **2M, 2N, 2R, 2T, and 2U**
12:00 a.m. November 2
through 11:59 p.m.
November 7;
12:00 a.m. November 10
through 11:59 p.m.
November 14;
AND
12:00 a.m. November 17
through 11:59 p.m.
November 19.))

| <u>Area</u> | <u>Time</u> | <u>Date(s)</u> | <u>Maximum Mesh Size</u> |
|---------------------------|-------------------------------------|--|------------------------------|
| <u>2M, 2N, 2R</u> | <u>6:00 a.m. through 6:00 p.m.</u> | <u>9/8, 9/9</u> | <u>6.5"</u> |
| <u>2T</u> | <u>6:00 a.m. through 6:00 p.m.</u> | <u>9/16, 9/17, 9/18, 9/19</u> | <u>6.5"</u> |
| <u>2M, 2N, 2R</u> | <u>6:00 a.m. through 6:00 p.m.</u> | <u>9/13, 9/14, 9/15, 9/16, 9/17, 9/18, 9/19</u> | <u>6.5"</u> |
| <u>2U</u> | <u>6:00 a.m. through 6:00 p.m.</u> | <u>9/16, 9/17, 9/18, 9/19</u> | <u>4.25"</u> |
| <u>2T</u> | <u>6:30 a.m. through 6:30 p.m.</u> | <u>9/21, 9/22, 9/23, 9/24, 9/25, 9/26,</u> | <u>6.5"</u> |
| <u>2U</u> | <u>6:30 a.m. through 6:30 p.m.</u> | <u>9/20, 9/21, 9/22</u> | <u>4.25"</u> |
| <u>2U</u> | <u>6:30 a.m. through 6:30 p.m.</u> | <u>9/24, 9/25, 9/26,</u> | <u>6.5"</u> |
| <u>2M, 2N, 2R</u> | <u>6:30 a.m. through 6:30 p.m.</u> | <u>9/20, 9/21, 9/22, 9/23, 9/24, 9/25, 9/26,</u> | <u>6.5"</u> |
| <u>2T</u> | <u>7:00 a.m. through 7:00 p.m.</u> | <u>9/28, 9/29, 9/30, 10/1, 10/2, 10/3,</u> | <u>6.5"</u> |
| <u>2U</u> | <u>7:00 a.m. through 7:00 p.m.</u> | <u>9/27, 9/28, 9/29,</u> | <u>4.25"</u> |
| <u>2U</u> | <u>7:00 a.m. through 7:00 p.m.</u> | <u>10/1, 10/2, 10/3,</u> | <u>6.5"</u> |
| <u>2M, 2N, 2R</u> | <u>7:00 a.m. through 7:00 p.m.</u> | <u>9/28, 9/29, 9/30, 10/1, 10/2, 10/3,</u> | <u>6.5"</u> |
| <u>2U</u> | <u>7:30 a.m. through 7:30 p.m.</u> | <u>10/5</u> | <u>6.5"</u> |
| <u>2M, 2N</u> | <u>7:30 a.m. through 7:30 p.m.</u> | <u>10/5, 10/6, 10/7, 10/8, 10/9</u> | <u>6.5"</u> |
| <u>2R</u> | <u>7:30 a.m. through 7:30 p.m.</u> | <u>10/5, 10/6</u> | <u>6.5"</u> |
| <u>2M, 2N, 2R, 2T, 2U</u> | <u>12:01 a.m through 11:59 p.m.</u> | <u>11/2, 11/3, 11/4, 11/5, 11/6</u> | <u>6.5"</u> |
| <u>2M, 2N, 2R, 2T, 2U</u> | <u>12:01 a.m through 11:59 p.m.</u> | <u>11/9, 11/10, 11/11, 11/12, 11/13</u> | <u>6.5"</u> |
| <u>2M, 2N, 2R, 2T, 2U</u> | <u>12:01 a.m through 11:59 p.m.</u> | <u>11/16, 11/17, 11/18, 11/19, 11/20</u> | <u>6.5"</u> |
| <u>2M, 2N, 2R, 2T, 2U</u> | <u>12:01 a.m through 11:59 p.m.</u> | <u>11/23, 11/24, 11/25, 11/26, 11/27</u> | <u>6.5"</u> |

Note: Those waters of 2T north of a line from Toke Point channel marker 3 easterly through Willapa Harbor channel marker 13 (green), then northeasterly to the power transmission pole located at 46°43.1907'N; 123°50.83134'W are closed through September 30.

Gear :

(2) Gillnet gear restrictions - All areas:

(a)(i) 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 that is legal for the fishery, and the length of any one net does not exceed one thousand five hundred feet in length.

(ii) It is unlawful to use a gillnet to fish for salmon 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 Willapa Bay, provided the net is 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) (~~From August 16 through 12:00 p.m., September 8: Mesh size must not exceed nine inches stretched.~~

~~(c))~~ From 12:01 (~~(p.m.)~~) a.m. September 8 through November 30: Mesh size must not exceed six and one-half inches stretched, except mesh size must not exceed four and one-quarter inches stretched in Area 2U on September 16, 17, 18, 19, 20, 21, 22, 27, 28, and 29.

Other:

(3) Recovery boxes and soak time limits described in this section are required from 12:01 (~~(p.m.)~~) a.m. September 8 through (~~(12:00 p.m. (noon) September 22)~~) 11:59 p.m. October 10:

(a) Each boat must have two operable recovery boxes or one box with two chambers on board when fishing in Willapa Bay Areas 2M, 2N, 2R, 2T, and 2U.

(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/bay water into each chamber.

(b) 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 (c) of this subsection. From September 8 through October 3, all chum 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 (c) of this subsection.

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

(d) 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.

(4) 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) Retention prohibitions:

(a) (~~From August 16 through November 30,~~) All green and white sturgeon and all steelhead, except as provided in subsection (3) of this section, must be handled with care to minimize injury to the fish and must be released immediately to the river/bay.

(b) (~~From August 16 through 12:00 p.m. September 8,~~) Retention of any species other than coho salmon, chum salmon, or Chinook is prohibited.

(c) From 12:01 (~~p.m.~~) a.m. September 8 through (~~12:00 p.m. (noon) September 22~~) 11:59 p.m. October 3, retention of any species other than coho salmon(~~, chum salmon,~~) or hatchery Chinook marked by a healed scar at the site of the adipose fin is prohibited.

(d) From (~~6:00 p.m. September 22 through November 30~~) 12:01 a.m. October 4 through 11:59 p.m. October 10, retention of any species other than coho salmon, chum salmon, (~~and Chinook is prohibited~~) or hatchery Chinook marked by a healed scar at the site of the adipose fin is prohibited.

(6) 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 have encounters included with each day's quick reporting.

(7) Do NOT remove tags from white sturgeon. Please obtain available information from tags without removing tags. Submit tag information to the Washington Department of Fish and Wildlife, 48 Devonshire Rd., Montesano, WA 98563.

(8) It is unlawful to fish with gillnet gear in Areas 2M, 2N, 2R, 2T, and 2U unless the vessel operator has attended a "Fish Friendly" best fishing practices workshop and has in their possession a department-issued certification card.

(9) 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 12~~) September 1.

(10) Fishers must provide notice of intent to participate in 2U on September 16, 17, 18, 19, 20, 21, 22, 27, 28, and 29 by contacting quick reporting by phone, fax, or e-mail. Notice of intent must be given prior to 12:00 p.m. on September 1. Fishers must take department observers when participating in these openings.