



# 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 15-281**

31 days after filing.

Other (specify) September 8, 2015 (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 Willapa Bay. These rules incorporate 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.

**Citation of existing rules affected by this order:**

Repealed:  
Amended: WAC 220-40-021 and 220-40-027.  
Suspended:

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

**Other authority :**

**PERMANENT RULE (Including Expedited Rule Making)**

Adopted under notice filed as WSR 15-12-115 on May 21, 2014 and WSR 15-14-124 on July 1, 2014.  
Describe any changes other than editing from proposed to adopted version:

In WAC 220-40-027 filed in WSR 15-14-124, the adopted regulations move one opening from September 9<sup>th</sup> to September 10<sup>th</sup> as requested by commercial fishers at the public hearing.

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:** August 24, 2015

**NAME (TYPE OR PRINT)**  
James Unsworth

**SIGNATURE**

**TITLE**  
Director

**CODE REVISER USE ONLY**

OFFICE OF THE CODE REVISER  
STATE OF WASHINGTON  
FILED

**DATE: August 25, 2015**  
**TIME: 2:05 PM**

**WSR 15-18-029**

**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:**

<b>Federal statute:</b>	New	_____	Amended	_____	Repealed	_____
<b>Federal rules or standards:</b>	New	_____	Amended	_____	Repealed	_____
<b>Recently enacted state statutes:</b>	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	<u>2</u>	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:**

<b>Negotiated rule making:</b>	New	_____	Amended	_____	Repealed	_____
<b>Pilot rule making:</b>	New	_____	Amended	_____	Repealed	_____
<b>Other alternative rule making:</b>	New	_____	Amended	_____	Repealed	_____

## Attachment A

### North of Falcon commercial salmon fishing rules for Willapa Bay, 2015

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

Pursuant to RCW 34.05.380(3)(c), WDFW finds that an effective date earlier than the normal 31-day time period following the filing of this rule is needed to avoid imminent peril to the public welfare. In the agency's determination, there are significant direct and indirect economic impacts to Willapa Bay fishermen, their families, and that portion of the local economy supported through their activities, that would accrue if the contemplated fishery is not opened on September 8, 2015.

In support of this finding, the agency estimates that the ex-vessel value lost in delaying the start of the commercial fishery for 31 days following filing with the Code Reviser would be approximately \$300,000, or nearly 60% of the total ex-vessel value of the fishery. In addition to that direct economic loss, there would very likely be indirect, but nonetheless very real, economic losses to the local economy.

If days lost through a delay in starting the commercial fishery were redistributed via a reconfiguration of the September season using emergency rules or modifying the current proposed rules in conformity with RCW 34.05.240, a small portion of the loss might be recovered, yielding a net direct loss of approximately \$270,000, or approximately 53% of the estimated ex-vessel value. Additional indirect losses would also remain. In addition, compression of the commercial fishery into early September would further result in unanticipated and unintended consequences for the recreational fishery and the economic benefits that the local economy is expected to receive from that fishery. These losses are not an acceptable alternative and would not fully address the imminent peril to public welfare. For these reasons, an earlier effective date of September 8, 2015, is established as necessary by these findings.

**WAC 220-40-021 Willapa Bay salmon—Summer fishery.** From July 5 through August 15, 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:~~

**Fishing periods:**

~~(1) Gillnet gear may be used to fish for coho salmon, chum salmon, and Chinook salmon:~~

Time:	Areas:
6:00 a.m. August 12 through 6:00 p.m. August 15.	Area 2N, Area 2T (except those waters 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), and Area 2U

**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 that is legal for the fishery, and the length of any one net does not exceed one thousand five hundred feet in length.~~

~~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 in transit 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) Mesh size must not exceed nine inches.~~

**Other:**

~~(3) 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.~~

~~(4) Retention of any species other than coho salmon, chum salmon, and Chinook salmon, is prohibited.~~

~~(5) Report ALL encounters of green sturgeon and steelhead (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.~~

~~(6) Do NOT remove tags from white sturgeon. Please obtain available information from tags without removing the tags. Submit tag infor-~~

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

(7) 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 his or her possession a department issued certification card.

(8) 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 July 28)).

**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;	<b>2N and 2U</b>
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;	<b>2M, 2N, 2R, and 2T</b> (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;	<b>2U</b>
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, 9/10</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.