



PROPOSED RULE MAKING

CR-102 (August 2017)
(Implements RCW 34.05.320)
Do **NOT** use for expedited rule making

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DATE: May 09, 2018

TIME: 10:36 AM

WSR 18-11-041

Agency: Washington Department of Fish and Wildlife (WDFW)

- Original Notice**
- Supplemental Notice to WSR** _____
- Continuance of WSR** _____

- Preproposal Statement of Inquiry was filed as WSR 18-03-129 on January 19, 2018 ; 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).**
- Proposal is exempt under RCW _____.**

Title of rule and other identifying information: (describe subject) WAC 220-354-250, Willapa Bay salmon fall fishery.

Hearing location(s):

Date:	Time:	Location: (be specific)	Comment:
Tuesday, July 10, 2018	9:30 a.m. – 11:00 a.m.	Region 6 Fish and Wildlife Office, 48 Devonshire Rd., Montesano, WA 98563	

Date of intended adoption: On or after July 17, 2018 (Note: This is **NOT** the **effective** date)

Submit written comments to:

Name: Scott Bird, WDFW Rules Coordinator
 Address: P.O. Box 43200, Olympia, WA 98504-3200
 Email: Rules.Coordinator@dfw.wa.gov
 Fax: 360-902-2155
 Other:
 By (date) July 10, 2018

Assistance for persons with disabilities:

Contact Dolores Noyes
 Phone: 360-902-2349
 Fax:
 TTY: 360-902-2207
 Email:
 Other:
 By (date) July 10, 2018

Purpose of the proposal and its anticipated effects, including any changes in existing rules: These rules incorporate the recommendations of the North of Falcon subgroup of the Pacific Fisheries Management Council for taking harvestable number of salmon during the commercial salmon fishery in Willapa Bay, while protecting species of fish listed as endangered.

Reasons supporting proposal: This rule will protect salmon species listed as endangered while supporting commercial salmon fishing opportunity in Willapa Bay and incorporates changes to the rule needed as a result of the recommendations of the North of Falcon subgroup of the Pacific Fisheries Management Council.

Statutory authority for adoption: RCW 77.04.012, 77.04.020, 77.04.055, 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:

Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters: None

Name of proponent: (person or organization) WDFW

<input type="checkbox"/> Private
<input type="checkbox"/> Public
<input checked="" type="checkbox"/> Governmental

Name of agency personnel responsible for:

	Name	Office Location	Phone
Drafting:	Barbara McClellan	48 Devonshire Rd., Montesano, WA 98563	360-249-1213
Implementation:	Kirt Hughes	1111 Washington St SE, Olympia WA	360-902-2705
Enforcement:	Chief Steve Bear	1111 Washington St SE, Olympia WA	360-902-2373

Is a school district fiscal impact statement required under RCW 28A.305.135? Yes No

If yes, insert statement here:

The public may obtain a copy of the school district fiscal impact statement by contacting:

Name:
Address:
Phone:
Fax:
TTY:
Email:
Other:

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:
TTY:
Email:
Other:

No: Please explain: This rule proposal does not affect hydraulics.

Regulatory Fairness Act Cost Considerations for a Small Business Economic Impact Statement:

This rule proposal, or portions of the proposal, **may be exempt** from requirements of the Regulatory Fairness Act (see chapter 19.85 RCW). Please check the box for any applicable exemption(s):

This rule proposal, or portions of the proposal, is exempt under RCW 19.85.061 because this rule making is being adopted solely to conform and/or comply with federal statute or regulations. Please cite the specific federal statute or regulation this rule is being adopted to conform or comply with, and describe the consequences to the state if the rule is not adopted.

Citation and description:

This rule proposal, or portions of the proposal, is exempt because the agency has completed the pilot rule process defined by RCW 34.05.313 before filing the notice of this proposed rule.

This rule proposal, or portions of the proposal, is exempt under the provisions of RCW 15.65.570(2) because it was adopted by a referendum.

This rule proposal, or portions of the proposal, is exempt under RCW 19.85.025(3). Check all that apply:

- | | |
|---|---|
| <input type="checkbox"/> RCW 34.05.310 (4)(b)
(Internal government operations) | <input type="checkbox"/> RCW 34.05.310 (4)(e)
(Dictated by statute) |
| <input type="checkbox"/> RCW 34.05.310 (4)(c)
(Incorporation by reference) | <input type="checkbox"/> RCW 34.05.310 (4)(f)
(Set or adjust fees) |
| <input type="checkbox"/> RCW 34.05.310 (4)(d)
(Correct or clarify language) | <input type="checkbox"/> RCW 34.05.310 (4)(g)
(i) Relating to agency hearings; or (ii) process requirements for applying to an agency for a license or permit) |

This rule proposal, or portions of the proposal, is exempt under RCW ____.

Explanation of exemptions, if necessary:

COMPLETE THIS SECTION ONLY IF NO EXEMPTION APPLIES

If the proposed rule is **not exempt**, does it impose more-than-minor costs (as defined by RCW 19.85.020(2)) on businesses?

No Briefly summarize the agency's analysis showing how costs were calculated. _____

Yes Calculations show the rule proposal likely imposes more-than-minor cost to businesses, and a small business economic impact statement is required. Insert statement here:

Introduction

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.

Cost of Compliance for Business

The changes proposed by these rules that carry potential compliance costs include gear restrictions during certain days in areas 2M, 2N, 2R, 2T, and 2U. WAC 220-354-250 specifies gillnet mesh requirements of 4.25" maximum for salmon fisheries in Catch Area 2U on September 17, 18, 19, 24, 25, 26, October 1, 2, 3, 8, 9, 11 and 12, in Catch Areas 2N on September 4, 8, 10, 13, and 15, in Catch Areas 2M on September 6, 11, and 12. 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 2M, 2N, 2R, 2T, or 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 a range of a one-time cost to satisfy compliance with the rule. That cost is between \$4000 and \$5000. *It should be noted that 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.*

Cost of Compliance for 10% of Business Largest to Comply

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 Willapa Bay 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 44 Willapa Bay salmon licenses that participated in the Willapa Bay fishery in 2017. 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 2017 combined, the average ex-vessel value per year was \$10,094. This means that the cost of compliance per \$100 of ex-vessel value would be \$44.58. 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 2017 was \$4,020, meaning the average cost of compliance would be \$111.94 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.


Steps to Reduce Costs

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.

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.

The public may obtain a copy of the small business economic impact statement or the detailed cost calculations by contacting:

Name: Barbara McClellan
 Address: 48 Devonshire Road, Montesano, WA 98563
 Phone: 360-249-1213
 Fax: 360-249-1229
 TTY:
 Email: Barbara.McClellan@dfw.wa.gov
 Other:

Date: May 9, 2018	Signature: 
Name: Scott Bird	
Title: Rules Coordinator	

AMENDATORY SECTION (Amending WSR 17-17-012, filed 8/4/17, effective 9/4/17)

WAC 220-354-250 Willapa Bay salmon 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:

Area	Time	Date(s)	Maximum Mesh Size
((2M, 2R	7:00 a.m. through 7:00 p.m.	9/5	4.25"
2M, 2N, 2R	7:00 a.m. through 7:00 p.m.	9/11, 9/12	4.25"
2T	6:00 a.m. through 6:00 p.m.	9/18	4.25"
2N	6:00 a.m. through 6:00 p.m.	9/18, 9/19, 9/20, 9/21, 9/22	4.25"
2M	6:00 a.m. through 6:00 p.m.	9/18, 9/19, 9/20	4.25"
2R	6:00 a.m. through 6:00 p.m.	9/18, 9/19, 9/20, 9/21	4.25"
2U	6:00 a.m. through 6:00 p.m.	9/18, 9/19, 9/20, 9/21	4.25"
2N, 2R	7:00 a.m. through 7:00 p.m.	9/25, 9/26, 9/27, 9/28, 9/29	6.5"
2M	7:00 a.m. through 7:00 p.m.	9/25, 9/26, 9/27, 9/28	6.5"
2T	7:00 a.m. through 7:00 p.m.	9/25, 9/26	4.25"
2U	7:00 a.m. through 7:00 p.m.	9/25, 9/26, 9/27, 9/28, 9/29	4.25"
2R	6:00 a.m. through 6:00 p.m.	10/2, 10/3, 10/4, 10/5, 10/6	6.5"
2M, 2N	6:00 a.m. through 6:00 p.m.	10/3, 10/4, 10/5, 10/6	6.5"
2T	6:00 a.m. through 6:00 p.m.	10/2, 10/3, 10/4, 10/5, 10/6	6.5"
2U	6:00 a.m. through 6:00 p.m.	10/2, 10/3, 10/4, 10/5, 10/6	4.25"
2N, 2R	7:00 a.m. through 7:00 p.m.	10/9, 10/10, 10/11, 10/12, 10/13	6.5"
2M	7:00 a.m. through 7:00 p.m.	10/9, 10/10, 10/11, 10/12	6.5"
2T	7:00 a.m. through 7:00 p.m.	10/9, 10/10	6.5"
2U	7:00 a.m. through 7:00 p.m.	10/9, 10/10, 10/11, 10/12, 10/13	4.25"
2M, 2N, 2R, 2T, 2U	12:01 a.m. through 11:59 p.m.	10/31 through 11/2	6.5"
2M, 2N, 2R, 2T, 2U	12:01 a.m. through 11:59 p.m.	11/6 through 11/10	6.5"
2M, 2N, 2R, 2T, 2U	12:01 a.m. through 11:59 p.m.	11/13 through 11/17	6.5"
2M, 2N, 2R, 2T, 2U	12:01 a.m. through 11:59 p.m.	11/20 through 11/24	6.5"
2M, 2N, 2R, 2T, 2U	12:01 a.m. through 11:59 p.m.	11/27 through 12/1	6.5"))
<u>2N</u>	<u>7:00 a.m. through 7:00 p.m.</u>	<u>9/4</u>	<u>4.25"</u>
<u>2M</u>	<u>7:00 a.m. through 7:00 p.m.</u>	<u>9/6</u>	<u>4.25"</u>
<u>2N</u>	<u>7:00 a.m. through 7:00 p.m.</u>	<u>9/8</u>	<u>4.25"</u>
<u>2N</u>	<u>7:00 a.m. through 7:00 p.m.</u>	<u>9/10, 9/13, 9/15,</u>	<u>4.25"</u>
<u>2M</u>	<u>6:00 p.m. through 6:00 a.m.</u>	<u>9/11 through 9/12</u>	<u>4.25"</u>
<u>2N, 2M</u>	<u>7:00 a.m. through 7:00 p.m.</u>	<u>9/17, 9/18, 9/19, 9/20, 9/21</u>	<u>6.5"</u>
<u>2U</u>	<u>7:00 a.m. through 7:00 p.m.</u>	<u>9/17, 9/18, 9/19</u>	<u>4.25"</u>
<u>2T</u>	<u>7:00 a.m. through 7:00 p.m.</u>	<u>9/19, 9/20, 9/21</u>	<u>6.5"</u>
<u>2N</u>	<u>7:00 a.m. through 7:00 p.m.</u>	<u>9/24, 9/25, 9/26, 9/27, 9/28</u>	<u>6.5"</u>
<u>2M</u>	<u>7:00 a.m. through 7:00 p.m.</u>	<u>9/24, 9/25, 9/26, 9/27</u>	<u>6.5"</u>
<u>2T</u>	<u>7:00 a.m. through 7:00 p.m.</u>	<u>9/26, 9/27, 9/28</u>	<u>6.5"</u>
<u>2U</u>	<u>7:00 a.m. through 7:00 p.m.</u>	<u>9/24, 9/25, 9/26</u>	<u>4.25"</u>

Area	Time	Date(s)	Maximum Mesh Size
<u>2N</u>	<u>7:00 a.m. through 7:00 p.m.</u>	<u>10/2, 10/3, 10/4, 10/5</u>	<u>6.5"</u>
<u>2M</u>	<u>7:00 a.m. through 7:00 p.m.</u>	<u>10/1, 10/2, 10/3, 10/4</u>	<u>6.5"</u>
<u>2T</u>	<u>7:00 a.m. through 7:00 p.m.</u>	<u>10/2, 10/3, 10/4, 10/5</u>	<u>6.5"</u>
<u>2U</u>	<u>7:00 a.m. through 7:00 p.m.</u>	<u>10/1, 10/2, 10/3</u>	<u>4.25"</u>
<u>2U</u>	<u>7:00 a.m. through 7:00 p.m.</u>	<u>10/8, 10/9</u>	<u>4.25"</u>
<u>2U</u>	<u>7:00 a.m. through 7:00 p.m.</u>	<u>10/11, 10/12</u>	<u>4.25"</u>
<u>2T</u>	<u>7:00 a.m. through 7:00 p.m.</u>	<u>10/10</u>	<u>6.5"</u>
<u>2U</u>	<u>12:01 a.m. through 11:59 p.m.</u>	<u>11/1 through 11/2</u>	<u>6.5"</u>
<u>2M, 2N, 2T, 2U</u>	<u>12:01 a.m. through 11:59 p.m.</u>	<u>11/5 through 11/9</u>	<u>6.5"</u>
<u>2M, 2N, 2R, 2T, 2U</u>	<u>12:01 a.m. through 11:59 p.m.</u>	<u>11/12 through 11/16</u>	<u>6.5"</u>
<u>2M, 2N, 2R, 2T, 2U</u>	<u>12:01 a.m. through 11:59 p.m.</u>	<u>11/19 through 11/23</u>	<u>6.5"</u>
<u>2M, 2N, 2R, 2T, 2U</u>	<u>12:01 a.m. through 11:59 p.m.</u>	<u>11/26 through 11/30</u>	<u>6.5"</u>

Gear :

(2) Gillnet gear restrictions - All areas:

(a) Drift gillnet gear only. It is unlawful to use set net gear.

(b) 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.

(c) 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.

(d) 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.

(e) From 12:01 a.m. September ((5)) 4 through 11:59 p.m. ((~~December 1~~)) November 30, 2018: 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((~~s~~-2M and 2R)) 2N on September ((5)) 4, 8, 10, 13, and 15, in Area((s)) 2M on September ((11, 12, 18, 19, and 20, 2N on September 11, 12, 18, 19, 20, 21, and 22, and 2R on September 11, 12, 18, 19, 20, and 21, in Area 2T on September 18, 25, and 26)) 6, 11, and 12, and in Area 2U on September 17, 18, 19, ((20, 21)) 24, 25, 26((, 27, 28, 29)), October 1, 2, 3, ((4, 5, 6)) 8, 9, ((10,)) 11, and 12((, and 13)).

Other:

(3) Recovery boxes and soak time limits described in this section are required from 12:01 a.m. September ((5)) 4 through 11:59 p.m. ((~~October 13~~)) November 30, 2018:

(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 5))~~ November 1 through ~~((December 1, 2017))~~ November 30, 2018, 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/or 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))~~ limited fish seller endorsement." According to WAC ~~((220-352-180(14)))~~ 220-352-320, reports must be made by 10:00 a.m. the day following landing, unless otherwise specified in an electronic fish receiving ticket reporting agreement (see WAC 220-352-035(3)).

(5) Retention prohibitions:

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

(c) From 12:01 a.m. September ~~((5))~~ 4 through 11:59 p.m. October ~~((13))~~ 12, 2018, retention of any species other than coho ~~((salmon or))~~, hatchery Chinook marked by a healed scar at the site of the adipose fin, or chum salmon is prohibited.

(d) From 12:01 a.m. ~~((October 31))~~ November 1 through 11:59 p.m. ~~((December 1))~~ November 30, 2018, retention of any species other than coho salmon ~~((7))~~ or hatchery Chinook salmon marked by a healed scar at the site of the adipose fin ~~((7, or wild (unmarked) Chinook))~~ 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 email 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) Those waters of Area 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 from ((6:00)) 12:01 a.m. September ((18, 2017)) 19, 2018, through 11:59 p.m., September ((30, 2017)) 28, 2018.

(9) 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.

(10) 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 email. Notice of intent must be given prior to 5:00 p.m. on August ((28, 2017)) 25, 2018.