

Concise Explanatory Statement (CES) for 2020 Coastal Commercial Salmon Fishery Regulations

The Washington Department of Fish and Wildlife (WDFW) filed the Preproposal Statement of Inquiry (CR-101) on January 9, 2020 (WSR 20-03-064), and the Proposed Rule-making (CR-102) for the 2020 Coastal Commercial Salmon Fishery on May 6, 2020 (WSR 20-10-112). This proposed rule-making package is comprised of amendments to:

WAC 220-354-250 – Willapa Bay salmon fall fishery, and

WAC 220-354-290 – Grays Harbor salmon fall fishery.

WDFW’s Concise Explanatory Statement (CES) for this rule-making package is divided into two sections, as follows:

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Section A. Willapa Bay Commercial Salmon Fishery Regulations

Rules amended as part of this rule-making:

WAC 220-354-250 – Willapa Bay salmon fall fishery

Rules repealed as part of this rule-making:

N/A

Rules created as part of this rule-making:

N/A

1. Background/Summary of Project

This Concise Explanatory Statement (CES) describes the Washington Department of Fish and Wildlife's (WDFW's) reasons for adopting the 2020 coastal commercial salmon fishing rules and responds to public comments received on the proposed rules. The rules, once adopted, will be set forth in the Washington Administrative Code (WAC) 220-354-250. The adopted rules provide a schedule to open the 2020 fall commercial gillnet salmon fisheries (Chinook salmon, coho, and chum) in Willapa Bay.

Rule-making by WDFW is guided by resource management policies adopted by the Fish and Wildlife Commission at its regularly or specially scheduled meetings that are open to the public. Those policies can be found at: <https://wdfw.wa.gov/about/commission/policies>

In addition, WDFW's Director and staff interact with the Commission by reporting on policy implementation, and the effect of rule development and implementation, as part of the Commission's public meetings. Commission meeting agendas, and staff reports to the Commission, are available at: <https://wdfw.wa.gov/about/commission/meetings>

Due to the complexity of the annual salmon season setting process, the Commission typically delegates the authority to the Director, as authorized by law, to adopt the rules to implement the outcomes of the process while providing policy guidance as described above. For example, the North of Falcon Policy (C-3608) contains policy objectives to guide fishery rule-making and provides an expressed delegation of rule-making authority to the Director.

As discussed below, the Administrative Procedures Act (APA) envisions a rule making process by which input is solicited from the public during the preproposal phase to aid in the development of proposed rules. This public process is then carried through as the rules, once

proposed, undergo additional public review and comment. The Director employs agency staff to assist in the rule-making process but retains the final delegated decision-making authority on such rules. After consideration of the public comment received and staff recommendations, the Director signs the Rule-making Order (CR-103P) adopting the final rules.

The APA process for these proposed rules began with the filing of the Preproposal Statement of Inquiry (CR-101) on January 09, 2020 (WSR 20-03-064). Thereafter, WDFW relied upon several forums to gather information and interact with regional fishery managers and constituent groups in order to develop the proposed rules that were presented in the CR-102 filed on May 6, 2020 (WSR 20-10-112) and available for formal public review and comment.

These rule-making processes are described in more detail as follows:

North of Falcon (NOF)/Pacific Fishery Management Council (PFMC) processes used to develop proposed rules (the “Pre-notice Inquiry” stage of rule-making)

State, federal, and tribal fishery managers, and the Oregon Department of Fish and Wildlife (ODFW) work collaboratively with recreational and commercial stakeholders during the NOF and PFMC meetings to develop fishery options based on the best available science. Data and information examined and considered include expected annual salmon returns, Endangered Species Act (ESA) requirements – expressed as annual stock-specific exploitation rates, treaty fishing rights of Northwest Tribes, and resource management policies of the Fish and Wildlife Commission. The name "North of Falcon" refers to Cape Falcon, Oregon, which is the southern border of active management for Washington salmon stocks. This process consists of a series of public meetings involving federal, state, and tribal representatives, who work together with input from recreational, commercial fishing, and conservation interests.

The NOF planning process deliberately overlaps with the March and April meetings of the PFMC, the federal authority responsible for setting ocean salmon seasons within the Exclusive Economic Zone, which extends from 3 to 200 miles off the Pacific coast. Work with federal fishery managers and fishing interests in offshore waters is essential to ensure coordinated state and federal fisheries for salmon stocks that migrate freely between state and federal waters.

In addition to the two PFMC meetings, the states of Washington and Oregon, and the Treaty Tribes, sponsor additional meetings to discuss alternative fishing seasons that meet conservation and harvest sharing objectives. Additionally, WDFW solicits input from advisory groups whose representatives represent a diverse range of user group interests.

The development of salmon fishing seasons begins with the completion of surveys of the previous year’s spawning grounds and hatchery return estimates by state and tribal biologists. These biologists apportion catch in each area to specific management groups and calculate a total run-size for each group. Biologists complete this analysis, also known as a run-reconstruction, each fall or early winter. Based on total run size, and the associated survival rates, state and tribal

biologists forecast the number of salmon and steelhead returning for the coming year. State and tribal biologists, in coordination with PFMC participants, typically complete the forecasts each year by late-February. From the run-size forecasts, fisheries managers determine the amount of fish available for directed or incidental harvest according to the management objectives. Once the forecasts and the number of fish available for harvest are determined, state and tribal fisheries managers begin the process of developing specific annual fishing regulation proposals to achieve, but not exceed, those harvest levels.

The first 2020 NOF public meeting specifically for Willapa Bay and Grays Harbor was held on February 27, 2020 at the Montesano City Hall in Montesano, WA. This meeting was designed to present regional forecast returns for local salmon stocks with historical data for each area and salmon species, discuss management and conservation objectives for each harbor, and collect input from the public. WDFW also presented other information that would be pertinent for 2020 salmon planning such as the Administrative Procedures Act (APA) and NOF meeting schedule.

WDFW presented the statewide 2020 run forecasts for stocks originating from rivers of Puget Sound, coastal Washington, and the Columbia River on February 28, 2020 at the Department of Social and Health Services Office Building 2 Auditorium in Olympia, WA. This meeting was followed by regional breakout sessions where WDFW staff further discussed 2020 forecasts and resource utilization implications in detail. During these breakout sessions, WDFW solicited fishery suggestions from those in attendance.

WDFW held a regionally focused Willapa Bay public meeting on March 12, 2020 at the Raymond Elks Lodge in Raymond, WA. The purpose of this meeting was to provide the public with information on the 2020 NOF process, discuss management and conservation objectives, review initial Willapa Bay terminal area management model (TAMM) runs, engage the public in dialog regarding fisheries, and collect input on fishing season structures for the commercial and recreational fisheries.

In addition to public meetings, WDFW also solicits input from advisory groups who represent a diverse range of user group interests. For this rule-making process, the Willapa Bay Salmon Advisory Group (WBSAG) was consulted during the rule making process as various fishing season proposals were developed and considered during the NOF process.

A WBSAG conference call was then held March 26, 2020. The purpose of this discussion was to review the management and conservation objectives, the implications and utilization of forecasts, provide and discuss results of model runs using the TAMM, and collect input in the form of fishery proposals from the WBSAG and any members of the public present.

WDFW held another WBSAG discussion on April 6, 2020 via the Zoom platform due to COVID-19 restrictions. The purpose of this discussion was to provide an update on amended

management objectives and technical adjustments made to fishery models, provide an update on the progress of NOF and PFMC meetings, further discuss fishery proposals evaluated using the Willapa Bay TAMM received to-date, and collect additional public and advisory input regarding fishery proposals.

Finally, WDFW held the last of the WBSAG discussions on April 16, 2020 via the Zoom platform. The purpose of this discussion was to provide the options developed by PFMC regarding the 2020 ocean fisheries, review the proposed Willapa Bay commercial and recreational fishery packages that would be filed in their respective CR-102s, and to collect additional input on the fishery proposals presented.

Based upon information and outreach generated through these public meeting forums, a draft rule was developed for consideration in the public rule-making process that follows the filing of a proposed rule. Accordingly, the CR-102 filed on May 6, 2020 (WSR 20-10-112) described WDFW's proposed rules for the 2020 Willapa Bay commercial salmon fisheries.

A formal rule-making public hearing was held on June 9, 2020. The public comment period was open from May 20, 2020 through June 8, 2020 as required by the Administrative Procedures Act. WDFW received one written comment on this rule-making during this period and a representative of the Willapa Bay Gillnetter's Association testified at the hearing.

Overall, the intent is for the 2020 Willapa Bay commercial rules package, once adopted, to replace and supersede the commercial fishing season established in 2019. Thus, the suite of rules encompassed in amended WAC 220-354-250 are a complete rules package for the 2020 fishing season consisting of those portions carried forward from 2019, together with revisions needed to update the fishing season to meet conservation and harvest objectives for 2020 based upon current forecasts of salmon abundance.

WAC 220-354-250 specifies the permissible commercial gear and methods of harvest that must be utilized, specifically the locations and the duration of the fall commercial salmon season for fisheries occurring between August 16 and December 31 annually.

In 2020, approximately 13 days of commercial harvest is authorized for Chinook salmon and coho during the fall period using a combination of selective (i.e., only hatchery-origin Chinook salmon with a clipped adipose fin can be retained) and non-selective fishing gear and techniques (Table 1).

Table 1. Willapa Bay commercial gillnet season for 2020.

Area	Time	Date(s)	Maximum Mesh Size
2U	6:00 a.m. through 6:00 p.m.	9/8	4.25"
2N	6:00 a.m. through 6:00 p.m.	9/9	4.25"
2T	6:00 a.m. through 6:00 p.m.	9/11	4.25"
2N, 2M, 2T, 2U	6:00 a.m. through 6:00 p.m.	9/14, 9/17	6.5"
2N, 2M, 2T, 2U	6:00 a.m. through 6:00 p.m.	9/21, 9/24	6.5"
2N, 2M, 2T, 2U	7:00 a.m. through 7:00 p.m.	9/28, 10/1	6.5"
2N, 2M, 2T, 2U	7:00 a.m. through 7:00 p.m.	10/5, 10/8	6.5"
2N, 2M, 2U	7:00 a.m. through 7:00 p.m.	10/12	6.5"
2N, 2M	7:00 a.m. through 7:00 p.m.	10/15	6.5"

Fishery mandates and Commission Policy

The adopted rules were developed pursuant to the authorities found in RCW Title 77, including those provisions in RCW 77.04.012 that establish conservation as the paramount objective - *“to conserve the wildlife and food fish, game fish, and shellfish resources in a manner that does not impair the resource.”* Where consistent with that conservation objective, WDFW must also *“seek to maintain the economic well-being and stability of the fishing industry in the state;”* *“promote orderly fisheries;”* and *“enhance and improve recreational and commercial fishing in this state.”* These broad statewide objectives do not necessarily focus on one region, one fish species or one segment of harvesters. The term “fishing industry of the state” includes both commercial and recreational interests. While these objectives are applied on a statewide basis, WDFW considers regional interests, individual fishing sectors, and the interests of varying gear-type groups when undertaking its efforts to promote statewide management interests.

The adopted rules were also developed based upon policies of the Fish and Wildlife Commission to promote the conservation and recovery of wild salmon and sustainable fisheries:

- Hatchery and Fishery Reform – C-3619
- 2019-2023 North of Falcon (NOF) Policy – C-3608
- Willapa Bay Salmon Management Policy – C-3622
- Policy Guidelines for PFMC Representation – C-3603

Overview of WDFW’s Consideration of Management Objective

Hatchery and fisheries management practices in Willapa Bay have developed through a complex history over the last decade during which the management of salmon resources experienced dramatic changes. Historically, harvest rates on Willapa Bay Chinook salmon exceeded 90% and hatchery-origin fish comprised the majority of the spawners in the Willapa and Naselle rivers. For many decades prior to 2000, salmon were managed with hatchery supplementation of

natural-origin fish. The focus was to attain an aggregate escapement of fish for spawning purposes without any differentiation between hatchery and natural-origin fish.

In the early 2000s, the Hatchery Scientific Review Group (HSRG) reviewed all of the state's hatchery programs and practices to assure our State's salmonid resources were managed for long-term health and sustainable harvest. Increasingly, there was concern hatchery and natural-origin fish needed to be managed with greater care to ensure a healthy wild population of salmon. In 2003, an increased focus on the conservation of natural-origin Chinook salmon was initiated. However, at that time, hatchery fish were not marked (adipose fin clipped); thus, making it difficult to distinguish between hatchery and natural-origin fish. Accordingly, WDFW was limited to the identification of an aggregate harvest rate for all Chinook salmon.

In 2009, the Commission adopted the Hatchery and Fishery Reform policy (C-3619). This policy directs WDFW to implement the principles created by the HSRG. For example, the recommendations outline the criteria for population designations, defines metrics used for hatchery broodstock practices, and sets levels of natural-origin integration into hatchery broodstock.

The continued downward trend of natural-origin Chinook salmon combined and expected return of mass marked (adipose fin clipped) hatchery-origin Chinook salmon in Willapa Bay, led WDFW to initiate a process focused on rebuilding and enhancing conservation of natural-origin Chinook salmon stocks. WDFW worked with the WBSAG to develop a draft Willapa Bay Management Plan (2010 Willapa Plan) in January 2010. The Plan provided a framework for a transition in hatchery and fishery management strategies for salmon fisheries. Prior to 2010, the primary objective had been the harvest of hatchery-origin Chinook salmon. In contrast, the new 2010 Plan described an enhanced focus on conservation to promote sustainable fisheries while reducing the likelihood Washington coastal Chinook salmon may be listed under the Endangered Species Act (ESA).

Key components of the Plan were:

- Establish the Naselle River as the primary Chinook salmon population requiring the highest level of protection for natural-origin fish;
- Limit the mortality rate on Naselle River natural-origin Chinook to 30%;
- Reduce production of hatchery Chinook salmon in the Naselle River;
- Maintain total production of hatchery Chinook salmon by increased production in Nemah and Willapa rivers; and
- Institute mark selective fisheries bay-wide.

In a 2014 review of the performance of the 2010 Plan, WDFW found insufficient progress was being made towards achieving its natural-origin Chinook salmon spawner escapement

objectives, this reality, coupled with the 2014 forecast for natural-origin Chinook salmon returns, indicated that additional conservation actions should be implemented in 2014. These actions were directed at enhancing conservation actions for the primary (Naselle River) and contributing (North River and Smith Creek) populations. Therefore, WDFW proposed additional, more conservative, fishery and hatchery management actions in 2014. Specifically, to address the declining trend in natural-origin spawners for the Naselle River Chinook salmon population, a mortality rate of no more than 20% on the Naselle River population was employed with the intent to exceed the average of 2006 – 2012 natural-origin spawner escapement (1,059 fish).

Because the recreational fishery generally has a low impact (*i.e.* mortalities associated with mark selective fisheries), the commercial fishery absorbed most of the reduction in mortality rate. Historically, the commercial fishery comprised most of the mortalities on natural-origin Chinook salmon. For example, pre-season planning in 2013 predicted the commercial fleet would harvest 28.3% of the Naselle River natural-origin Chinook salmon out of the combined predicted impact of 29.8%. The recreational fishery comprised only 1.5% of the total natural-origin Chinook salmon impact. The entire recreational fishery could be closed and the reduction from a 30% mortality rate to 20% would not be achieved. With the reduction in the pre-season targeted mortality rate, preliminary estimates suggest the actual mortality rate on Naselle River natural-origin Chinook salmon was 38% in 2014.

Development and Implementation of the Willapa Bay Salmon Management Policy (C-3622)

In the fall of 2014, WDFW initiated the development of a policy to advance the conservation and restoration of wild salmon; the policy also considered the need to maintain or enhance the economic well-being and stability of the fishing industry in the state. In addition, the policy directs WDFW to provide the public with outdoor recreational experiences, fair distribution of fishing opportunities throughout the Willapa Bay Basin, and improvement of technical rigor in fishery management. The Willapa Bay Salmon Management Policy, C-3622, was approved by the Commission, effective June 13, 2015. The adopted policy includes substantial changes in fishery management and hatchery production that are intended to restore natural-origin Chinook and chum salmon, while ensuring the continued health of coho salmon.

Key components of the new policy included:

1. Willapa River was established as the “primary” Chinook salmon stock instead of the Naselle River. Willapa River was chosen for these reasons:
 - Chinook salmon returning to Forks Creek Hatchery on the Willapa River have a more direct and shorter route to escape fisheries in the bay. This provides greater flexibility to conduct fisheries in the middle portion of the bay focusing harvest

on hatchery fish returning to Nemah and Naselle hatcheries while minimizing impacts on the primary stock;

- Collection of hatchery broodstock is more difficult in the Willapa River due to the lack of infrastructure on the mainstem. Due to the location of the hatchery and weir on Forks Creek (tributary of the Willapa River), the weir does not prevent fish from migrating upstream on the mainstem Willapa River. On the other hand, the weir at Naselle River Hatchery is used to collect broodstock and remove excess hatchery fish before reaching the spawning grounds; and
 - The potential for hatchery fish spawning in the wild is higher. Forks Creek Hatchery (~River Mile 30) is further upstream than the Naselle Hatchery (~River Mile 16) consequently fish have substantially more suitable spawning habitat before reaching the hatchery.
2. Under the 2010 draft Willapa Plan, there was only one “contributing” stock, North River. In the new policy, the Naselle River was designated a “contributing” stock as an increased conservation measure for natural origin Chinook salmon.
 3. Initiate a rebuilding program for Chinook salmon intended to result in meeting spawner goals in 16-21 years. The policy recognized three brood cycles were needed to rebuild natural-origin stocks without imposing extremely severe limitations on fisheries.
 4. Limit mortality on Willapa River and Naselle River natural origin Chinook salmon to 14% with an additional 6% allowed for 2015-2019 with specific criteria on the use of selective commercial fishing gear with low release mortality rates. The policy promotes increased use of selective commercial fishing gear with low release mortality rates to help transition the commercial fisheries from 2015 through 2019. Increased use of this fishing gear is expected to increase the commercial catch of hatchery Chinook salmon and reduce surpluses at the hatcheries.
 5. Reduce hatchery Chinook salmon production at Forks Creek Hatchery.
 6. Enhance the recreational fishery for Chinook salmon.
 7. Reduce conflict between commercial and recreational fisheries to simplify annual regulation setting process and promote orderly fisheries.
 8. Prioritize coho salmon for the commercial sector to offset reductions in Chinook salmon harvest.

9. Maintain or enhance the economic well-being and stability of the commercial and recreational fishing industry in the state.

Taken together, this policy provides a cohesive set of principles and guidance to promote the conservation of wild salmon and steelhead and improve WDFW's management of salmon in the Willapa Bay Basin. The Commission recognized management decisions must be informed by fishery monitoring (biological and economic) and adaptive management will be necessary to achieve the stated purpose of this policy.

2. Reasons for adopting the rule

WDFW considered all the facts and circumstances surrounding the proposed 2020 Willapa Bay salmon fall fishing season. WDFW carefully reviewed all input from the general public regarding preferred fishing rules during North of Falcon public meetings (the APA Pre-notice Inquiry stage) and the rule-making process used to provide notice and comment on proposed rules (CR-102 filing of proposed rules, additional comment solicitation, and a rule-making hearing). WDFW considered and relied upon the best technical and scientific information available to state fishery management experts, including pre-season forecasts of the abundance of salmon stocks and data that will be used during the season to update forecasts. Important characteristics of the Willapa Bay commercial salmon fishery were considered, including the catch likely to result from the proposed rules, providing significant harvest opportunities, and the economic value of these fisheries. WDFW also considered fishing schedules of state recreational fisheries as these schedules must be coordinated with the commercial fishing schedules in Willapa Bay.

As proposed, WAC 220-354-250 would open the fall commercial salmon fishery for Chinook salmon, coho, and chum salmon in Willapa Bay. The proposed rules were partially selective in that they required the release of natural-origin (unmarked) Chinook salmon from September 8, 2020 through October 15, 2020, and it would be lawful to retain chum during that same timeframe. Natural-origin Chinook salmon and chum are not target species for commercial fisheries but are incidentally encountered during the harvest of hatchery Chinook salmon and coho. The forecast of natural-origin Chinook salmon returning to Willapa Bay indicates there will be insufficient numbers to allow directed fisheries on natural-origin Chinook salmon, which are identified by the presence of an intact adipose fin (unmarked fish). Based on the Willapa Bay Salmon Management Policy (C-3622), there will be no early August commercial salmon fishery for Chinook salmon in Willapa Bay that is directed at harvesting Columbia River and Willapa Bay Chinook salmon (referred to as the "Dip-in Fishery"). The purpose of this is to preserve Chinook salmon mortalities for use during coho directed fisheries and reduce conflict between the recreational and commercial fisheries.

Fishing dates and locations were modeled to account for incidental encounters of non-target salmon in order to provide meaningful commercial fishery consistent with conservation objectives. In addition, the season time, place, and manner open for fishing were shaped to reduce the interaction between recreational and commercial fisheries, which furthers the objective of maintaining orderly fisheries. Sharing between commercial and recreational harvest groups was considered to provide meaningful harvest opportunities for both groups within the context of historic sharing patterns in this area of the Washington coast.

Overview of WDFW's Consideration of Management Objectives

As noted above, the Commission adopted a new Willapa Bay Salmon Management Policy (C-3622) effective June 13, 2015. The policy delegates the Commission's rule-making authority to the Director. This reflects the Commission's practice of providing policy guidance to the Director and his staff as they work to develop fishing seasons and rules governing those seasons each year. In that regard, the Willapa Bay Salmon Management Policy reflects the Commission's principal expression of policy guidance for achieving conservation objectives, and harvest allocation objectives between the recreational and commercial sectors. The adoption of the policy followed an extensive public process with multiple public comment opportunities. While the policy details specific objectives, it also recognizes the uncertainty associated with fishery management and provides guidance on the utilization of adaptive management to provide appropriate flexibility in the implementation of the policy guidance.

On February 7, 2020, during one of its regularly scheduled open public meetings, the Commission provided WDFW with additional guidance on the implementation of Policy C-3622 for the 2020 season. The general guidance provided by Commission directed WDFW staff to carryover the 2019 guidance for 2020, except that the 20% impact rate cap to natural origin Chinook salmon would be decreased to 14% as described in Policy C-3622. Conservation and management objectives for fisheries in the Willapa Bay Basin are based on language contained within Policy C-3622 and interim guidance received from the Commission include:

- Actively manage to not exceed 14% total impacts for natural-origin Chinook salmon on Willapa River;
- Actively manage to not exceed 14% total impacts for natural-origin Chinook salmon on Naselle River;
- Actively manage to not exceed 10% total impacts for chum;
- Suspend the Fishery Management #6 of the Fall Chinook Salmon species-specific guidance in the Willapa Bay Salmon Management Policy that states:
 - Limit the fishery impact rate on Willapa and Naselle river natural origin fall Chinook salmon to no more than 14%;
 - No commercial fisheries shall occur within areas 2T and 2U prior to September 16; and

- No commercial Chinook salmon fisheries shall occur in areas 2M, 2N, 2P, and 2R until after September 7.
- Allow WDFW the flexibility to determine the bag limits for Chinook salmon and coho in the recreational fishery that is appropriate within the 14% harvest rate.
- Species harvest prioritization
 - Chinook salmon harvest for recreational sector
 - Coho and chum for commercial sector
- Provide for hatchery broodstock necessary for a Chinook smolt release of:
 - 400,000 at Forks Creek Hatchery
 - 3.3 million at Nemah Hatchery
 - 5 million at Naselle Hatchery

Initially, the 14% impact rate cap was interpreted to apply to Willapa Bay natural origin Chinook in the aggregate. Based on input received, WDFW undertook a review of the development of the 14% terminal impact rate cap to Chinook salmon. As was communicated in an email to the WBSAG dated March 31, 2020, Department staff amended the Chinook salmon objective, based on this review, to a terminal impact rate cap of 14% on Willapa River and Naselle River natural origin Chinook salmon separately.

This added guidance applies only to 2020. All other items in the Willapa Bay Salmon Management Policy, C-3622, will remain in effect for 2020, together with the various other policy guidance positions adopted by the Commission that inform and are considered by the Director when developing and adopting annual fishing seasons/regulations.

Regulations for the 2020 Willapa Bay commercial fisheries were evaluated with respect to objectives in the policy and the additional guidance provided by the Commission for 2020 only. These objectives were shared with industry representatives, members of the WBSAG, and the public during the NOF process. General or commercial pre-season planning objectives were:

1. Fisheries will be managed with the intent of achieving escapement goals in the North, Willapa and Naselle systems in 16-21 years for fall Chinook salmon and for achieving aggregate escapement goals for coho and chum salmon.
2. Commercial fisheries will not occur in commercial catch areas 2T and 2U prior to September 16. Commercial fisheries will not occur in commercial catch areas 2M, 2N, 2P and 2R until after Labor Day.
3. If it becomes apparent that a scheduled fishery will exceed the aggregated pre-season natural-origin Chinook salmon mortality (impact) expectation, WDFW shall implement in-season

management actions to avoid cumulative mortalities of natural-origin Chinook salmon in excess of the aggregated pre-season projection.

4. The fishery management objectives for fall Chinook salmon, in priority order, are to:
 - Achieve spawner goals in North, Willapa and Naselle systems in 16-21 years;
 - Provide for an enhanced recreational fishing season; and
 - Provide meaningful opportunities for commercial fisheries within the remaining available fishery impacts

5. Fishery management after 2018: Fisheries in the Willapa Bay Basin will be managed with the goal of:
 - Limiting the fishery impact rate of Willapa and Naselle River natural origin fall Chinook salmon to no more than 14%;
 - No commercial fisheries shall occur with areas 2T and 2U prior to September 16; and
 - No commercial Chinook salmon fisheries shall occur in areas 2M, 2N, 2P, and 2R until after September 7.

6. Manage fisheries with the goal of achieving aggregate spawner goal for Willapa Bay natural origin coho salmon. When the pre-season forecast of natural-origin adult coho salmon is less than the aggregate goal, or less than 10% higher than the aggregate goal, fisheries in Willapa Bay basin will be scheduled to result in an impact of no more than 10% of the adult return.

7. Fisheries will be managed with the goal of achieving the aggregate goal for Willapa Bay naturally spawning chum salmon. Until the spawner goal is achieved for two consecutive years, the maximum fishery impact will not exceed a 10% impact rate and no commercial fisheries will occur in the period from October 15-31. If the number of natural-origin spawners was less than the goal in three out of the preceding five years, WDFW will implement the following measures:
 - The predicted fishery impact for chum in Willapa Bay Basin will be scheduled to result in an impact of no more than 10% of the adult return; and
 - When the chum pre-season forecast is 85% or less of the escapement goal, the predicted fishery impact for chum in Willapa Bay Basin will be scheduled to result in an impact of no more than 5% of the adult return.

Rationale of Management Objectives

WDFW believes that the proposed rules for the 2020 Willapa Bay commercial salmon fishing regulations would result in fisheries consistent with the conservation and allocation objectives identified above based on the following rationale:

1. Fisheries will be managed with the intent of achieving escapement goals in the North, Willapa and Naselle systems in 16-21 years for fall Chinook salmon and for achieving aggregate escapement goals for coho and chum salmon.

Willapa, North and Naselle River natural-origin fall Chinook salmon are forecast to return at a level below the escapement goal (2020 pre-season forecast natural-origin Chinook salmon, 2,914, spawner goal, 4,350). The scheduled fisheries in the proposed rule are expected to result in 2,533 Willapa Bay natural-origin Chinook salmon spawners. Natural origin Chinook salmon are not expected to meet the goal regardless of whether fisheries occur or not. In these circumstances, fishery openings directed at healthy stocks are evaluated to limit the mortality impact on the stock of fish that will not attain its spawner escapement goal. The proposed rule has a low impact on Willapa, North and Naselle Rivers natural origin fall Chinook salmon.

Preseason modeling of planned recreational and commercial fisheries is estimated to result in an impact rate of 13.2% and 13.7% on Willapa River and Naselle River natural origin Chinook respectively. Combined fisheries modeled in Willapa Bay are expected to result in achievement of escapement goals for both Willapa Bay coho and chum stocks. The Willapa Bay escapement goal for natural origin coho is 13,600 fish. The modeled fisheries predict escapement of 13,840 natural origin coho and 29,601 hatchery origin coho returning to the spawning grounds. This predicted escapement exceeds the 17,200 naturally spawning coho goal established by PFMC. The number of Willapa Bay chum predicted to escape in the adopted fishery is 38,867, exceeding the spawner escapement goal of 35,400.

2. Commercial fisheries will not occur in commercial catch areas 2T and 2U prior to September 16. Commercial fisheries will not occur in commercial catch areas 2M, 2N, 2P and 2R until after September 7.

Fishery Management Guiding Principle #6 in the Willapa Bay Salmon Management Policy, C-3622, was suspended based on additional guidance provided by Commission for 2020. Therefore, the commercial fisheries in the adopted rule are scheduled to begin on September 8, 2020 in commercial catch area 2U, September 9 in commercial catch area 2N, and September 11, 2020 in commercial catch area 2T. Commercial catch area 2R will be closed for the season.

3. If it becomes apparent that a scheduled fishery will exceed the aggregated preseason natural origin Chinook salmon mortality (impact) expectation, WDFW will implement in-season management actions in an effort to avoid cumulative mortalities of natural origin Chinook salmon in excess of the aggregated pre-season projection.

Commercial fisheries in the adopted rule will be monitored using a combination of on-board sampling, daily fish ticket evaluation, and sampling of the landed catch. These data will be used to evaluate actual catch versus what was projected in the Willapa Bay TAMM.

In-season management actions—typically implemented via emergency regulations given the pace at which information is developed and fisheries proceed—will be initiated if commercial landings exceed expected catch and/or impacts compared to projected preseason estimates in order to avoid the risk of not meeting conservation objectives.

4. The fishery management objectives for fall Chinook salmon, in priority order, are to:
 - a. Achieve spawner goals in North, Willapa and Naselle systems in 16-21 years;

Results from the Willapa Bay All-H Analyzer (AHA) modeled with a four-year transition period along with a maximum mortality rate of 14% for Willapa River and Naselle River natural-origin Chinook salmon in Phase Two of policy implementation would not preclude achieving the escapement goals in 16-21 years in these systems. The proposed rules do not exceed a 14% mortality rate for Willapa and Naselle Rivers natural-origin Chinook salmon and are expected to promote achievement of the objectives in 16-21 years.

- b. Provide for an enhanced recreational fishing season; and

Recreational fishing opportunity is provided in a companion regulation (WSR 20-10-115). Beginning in 2015, the recreational fishery provided meaningful opportunity with increased bag limits, opened historically closed areas, and extended freshwater seasons. Due to lower natural and hatchery origin coho forecasts for 2020, some recreational fisheries needed to be curtailed in systems with limited coho or Chinook salmon impacts historically. See Concise Explanatory Statement for Recreational Salmon Regulations for 2020 for further detail.

- c. Provide meaningful opportunities for commercial fisheries within the remaining available fishery impacts.

Commercial fisheries are expected to catch 1,589 hatchery Chinook salmon in 2020 while predicted exploitation rates for commercial fisheries from the Willapa Bay TAMM are 4.9% for Willapa and North rivers and 8.3% for Naselle River natural origin fall Chinook salmon after accounting for recreational fishery harvest and impacts. Thus, commercial fisheries utilize 36.8% and 60.0% of the available natural-origin Chinook salmon mortalities for Willapa and Naselle rivers, respectively.

5. Fishery Management After 2018: Fisheries in the Willapa Bay Basin will be managed with the goal of:
 - a. Limiting the fishery impact rate of Willapa and Naselle river natural origin fall Chinook salmon to no more than 14%;
 - b. No commercial fisheries shall occur with areas 2T and 2U prior to September 16; and
 - c. No commercial Chinook salmon fisheries shall occur in areas 2M, 2N, 2P, and 2R until after September 7.

On February 7, 2020, the Commission provided WDFW with additional guidance on the implementation of policy C-3622 for the 2020 season. The general guidance provided by the Commission directed WDFW to:

- Actively manage to not exceed 14% total impacts for natural-origin Chinook salmon on Willapa River; and
- Actively manage to not exceed 14% total impacts for natural-origin Chinook salmon on Naselle River.

Initially, the 14% impact rate cap was interpreted to apply to Willapa Bay natural origin Chinook in the aggregate. Based on public input received, WDFW undertook a review of the development of the 14% terminal impact rate cap to Chinook salmon. As was communicated in an email to the WBSAG dated March 31, 2020, Department staff amended the Chinook salmon objective to a terminal impact rate cap of 14% on Willapa River and Naselle River natural origin Chinook salmon based on this review.

The predicted impact on Willapa River fall Chinook salmon terminal fisheries is 13.2%. The predicted impact on Naselle River fall Chinook salmon terminal fisheries is 13.7% (Table 2).

6. Manage fisheries with the goal of achieving aggregate spawner goal for Willapa Bay natural origin coho salmon.

The 2020 pre-season forecast for Willapa Bay natural origin coho is 16,074 fish compared to a spawner escapement goal of 13,600. The scheduled fisheries in the adopted rule are expected to result in 13,840 Willapa Bay natural origin coho spawners.

Table 2. Escapement goal and exploitation rate objectives for salmon fisheries in Willapa Bay for the 2020 season.

Stock	Objective Type	Objective Criteria	Modeled Result
Willapa Bay natural-origin coho	Escapement Goal	13,600	13,840
Willapa Bay naturally spawning chum	Escapement Goal	35,400	38,867
Willapa River natural-origin Chinook	Exploitation Rate	< 14%	13.2%
North River Natural-origin Chinook	Exploitation Rate	< 14%	13.2%
Naselle River Natural-origin Chinook	Exploitation Rate	< 14%	13.7%
Willapa Bay Chum	Exploitation Rate	< 10%	4.7%

7. Fisheries will be managed with the goal of achieving the aggregate goal for Willapa Bay naturally spawning chum salmon. Until the spawner goal is achieved two consecutive years, the maximum fishery impact shall not exceed a 10% impact rate and no commercial fisheries will occur in the period from October 15-31. If the number of natural-origin spawners was less than the goal in 3 out of the last 5 years, WDFW shall implement the following measures:
 - a. The predicted fishery impact for chum in Willapa Bay Basin will be scheduled to result in an impact of no more than 10% of the adult return; and
 - b. When the chum preseason forecast is 85% or less of the escapement goal, the predicted fishery impact for chum in Willapa Basin will be scheduled to result in an impact of no more than 5% of the adult return.

Willapa Bay chum stocks have made their spawner escapement objective four out of the last five years, and this stock has reached this objective for two consecutive years (Table 3). As described in the policy guidance above, the management objective for Willapa Bay chum is not to exceed an impact rate of 10% in Willapa Bay basin. The predicted impact in 2020 on Willapa Bay naturally spawning chum is 4.7%.

Table 3. Estimated chum escapements for 2015-2019. Escapement goal = 35,400. Bold values indicate estimated escapement exceeds the escapement goal.

Year	Estimated Escapement
2015	44,147
2016	78,725
2017	20,191
2018	38,582
2019	40,907

WDFW staff considered the available relevant data and public input surrounding the 2020 Willapa Bay commercial salmon season schedule. The proposed regulations meet the primary conservation constraints in the Willapa Bay Salmon Management Policy C-3622 as well as the additional guidance provided by the Commission for 2020; do not exceed 14% mortality rate on natural-origin Chinook salmon for Willapa and Naselle Rivers separately, do not exceed 10% mortality rate on chum, and meet or exceed the natural-origin coho spawner goal.

While acknowledging commercial catch of Chinook salmon is more efficient in August compared to September, the proposed rules allocates natural-origin Chinook salmon mortalities in September rather than in August. This maximization of coho catch is consistent with the policy guidance of prioritizing coho for the commercial sector and meets the allowable conservation constraint for natural-origin Chinook salmon. The proposed rules also reduce conflict between the recreational and commercial sectors. Finally, the proposed rules are expected to result in over \$141,200 of ex-vessel value for the commercial sector.

WDFW carefully reviewed all input from industry representatives during the NOF public meetings and the state’s rule making process. WDFW’s 2020 Willapa Bay commercial salmon fishing regulations comply with its statutory mandate and are consistent with the management objectives for these fisheries.

3. Differences between the text of the proposed rule and the rule as adopted:

No changes were made between the rule proposed in the CR-102 and the rule to be adopted in the CR-103P.

4. Public comments, responses to comments, and consideration of comments:

Following publication of the CR-102 and proposed rules, a formal rule making public hearing was held on June 9, 2020 via webinar to maintain the Governor's Stay Safe, Stay Healthy order and social distance during this pandemic of COVID-19 virus. The public comment period was open May 6, 2020 through June 8, 2020, as required by the Administrative Procedures Act (APA). Written comments could be provided to the Rules Coordinator through June 8, 2020. This hearing provided the public with an opportunity to comment on the proposed rules published in WSR 20-10-112 (WAC 220-354-250, Willapa Bay salmon fall fishery).

One written comment was received during public comment period regarding the proposed Willapa Bay commercial fishery through WDFW's online portal. No public comments were received through the Rules Coordinator and one individual provided testimony during the public hearing. In addition, WDFW considered substantive comments received during the NOF process.

WDFW carefully reviewed the information gathered during the rule development process following issuance of the CR-101, together with all input (verbal and written) from fishing industry representatives, recreational anglers, the WBSAG, and the general public. WDFW relied upon internal technical and scientific expertise for NOF and PFMC planning processes.

WDFW fishery managers evaluated preseason forecast abundance of salmon stocks returning to Willapa Bay in combination with historic harvest data from fisheries occurring in the Willapa Bay watershed.

Important characteristics of the Willapa Bay commercial salmon fishery that were considered:

- Total number of licensed vessels potentially participating in each fishery;
- Number of vessels that have participated in each fishery in recent years;
- Outcomes regarding target and non-target species catch in recent years;
- Potential for transfer of effort from other fisheries in other areas (i.e., Columbia River, Grays Harbor);
- Catch likely to result from the proposed rules and associated conservation impacts;
- Economic value of these commercial fisheries;
- Ability to acquire broodstock necessary to achieve hatchery production goals
- Rule simplification; and
- The relationship between commercial and recreational fisheries in order to provide orderly fisheries.

WDFW also considered fishing preferences of the recreational fishery in terms of time, area, tidal cycles, and potential for gear or fishing sector conflict.

All applicable testimony and comments received during the formal rule-making period following issuance of the proposed rule via the CR-102 has been categorized into the following points with WDFW's response(s) below.

Comment #1: Commenters object to not including a conservation buffer to Willapa Bay Chinook salmon, coho, and chum natural origin impact rates and management objectives.

WDFW understands the concept regarding the creation of a buffer to promote conservation but does not support its creation for two reasons. First, the harvest control rules or impact rate caps, described in Policy C-3622, are intended to provide the appropriate conservation actions to achieve the policy objective of “*conservation and restoration of wild salmon in Willapa Bay.*” There is no language concerning buffers in Policy C-3622 or in the interim policy guidance that has subsequently been provided by the Commission as a result of the annual policy review briefings. Also, buffers are generally used to deal with uncertainty in harvest predictions versus actual harvest estimates lacking robust monitoring programs that can produce in-season harvest estimates in a timely manner. Willapa Bay fisheries in the estuary, both recreational and commercial, are robustly monitored and provide fishery managers with the ability to produce timely estimates by statistical week. This allows for comparison of harvest/impacts predicted pre-season versus actual in-season estimates in order to apply the adaptive management principles described in Policy C-3622 to ensure attainment of conservation objectives.

Comment #2: Commenter is concerned regarding the lack of support by the members of the Willapa Bay Salmon Advisor Group for the fishery proposal shared with the group during the April 16, 2020 discussion.

The WBSAG is not a decision-making body. It is meant to provide input to WDFW regarding public feedback and fishery values, as fisheries are shaped and scoped to meet conservation and management objectives.

Comment #3: Commenter believes WDFW failed to follow the Willapa Bay Salmon Management Policy (C-3622) by allowing commercial fishing prior to the date allowed in the policy, and believes this action violates any conservation or priority principles established in the policy.

The interim guidance provided by the Commission for 2020 set the management objective for Chinook salmon as “*actively manage to not exceed 14% total impacts for natural origin Chinook salmon on Willapa and Naselle Rivers separately.*” The predicted pre-season impact rate on Willapa River and Naselle River fall Chinook salmon terminal fisheries is estimated to be 13.2% and 13.7%, respectively (Table 2). This meets the interim guidance provided for Chinook

salmon by the Commission for 2020. The management objective for natural origin coho is to achieve the aggregate natural origin spawner escapement goal of 13,600. The combined fisheries model for Willapa Bay natural origin coho are expected to result in a spawner goal of 13,840. Lastly, the management objective for chum in Willapa Bay is to “*actively manage to not exceed 10% total impacts for chum.*” The combined fisheries model for Willapa Bay chum are projected to result in an estimated impact rate of 4.7% (Table 2). The adopted fishery for Willapa Bay Chinook salmon, coho, and chum meet all management objectives set forth by the Commission for 2020.

Additionally, Chinook salmon priority belongs with the recreational sector described in policy C-3622. However, interim guidance from the Commission for 2020 suspends the Fishery Management #6 of the Fall Chinook Salmon species-specific guidance in the Willapa Bay Salmon Management Policy C-3622 that states, “*No commercial Chinook salmon fisheries shall occur in areas 2M, 2N, 2P, and 2R until after September 7.*” The suspension of this policy guidance eliminated any date restrictions when planning the commercial fishery for the 2020 season, thus allowing WDFW the discretion to schedule fisheries during any statistical week for the 2020 fall salmon season. Most recreational fisheries in Willapa Bay both marine and freshwater begin either June, July, or August, well before any commercial fishing is scheduled to begin in 2020. In this adopted rule, there are no commercial fishing days scheduled until after Labor Day in Willapa Bay for the 2020 fall salmon season. (Table 1). Therefore, WDFW does not believe the Chinook salmon species prioritization described in policy C-3622 or in the interim guidance provided by the Commission for 2020 has been violated.

Comment #4: Commenter expressed concern that the modeled fishery proposal (in model K) was delivered to the advisory group at the last minute.

Department staff presented nine fishery models, which had been developed based on input received from the general public and advisory meetings to-date at the March 26th WBSAG meeting. Thereafter, at the next WBSAG discussion held on April 6, Department staff presented a reduced set of three fishery model options based upon public and advisory input received to-date, and after considering discussions from the previous discussion of the WBSAG. Department staff described, in detail, the general fishery paradigms associated with each modeled fishery. This discussion included description of model “K”, which used time and area closures and reduced freshwater recreational bag limit to attain conservation and management objectives. WDFW staff noted that model “K” was developed based on the comments provided at the March 26, 2020 WBSAG discussion. The other models presented embodied historical geospatial and temporal recreational fisheries, with the only differences being a more robust or reduced recreational adult bag limit. A final fishery proposal presented to the WBSAG was similar in structure to model “K”, however, took in to account important feedback from the public, advisory group, and policy guidance, resulting in a mark selective fishery for Chinook salmon and coho throughout Willapa Bay. This model was presented along other model options at one of

the earlier WBSAG meetings, and therefore, staff do not agree that it was presented last minute as suggested in the comment.

Comment #5: Commenter believes a new gear conflict between the commercial and recreational sectors is created at the lower end of the bay because the early part of the proposed rules allows commercial fishing in areas 2N or 2M in front of the Naselle and Nemah freshwater systems.

On February 7, 2020, the Commission provided WDFW additional guidance on the implementation of the Willapa Bay Salmon Management Policy C-3622 for the 2020 fall salmon season. One objective in the additional guidance for 2020 suspends the Fishery Management #6 of the Fall Chinook Salmon species-specific guidance in the Willapa Bay Salmon Management Policy that states, “No commercial Chinook salmon fisheries shall occur in areas 2M, 2N, 2P, and 2R until after September 7.” The suspension of this policy guidance eliminated any date restrictions when planning the commercial fishery for the 2020 season, thus allowing WDFW staff to have the authority to schedule fisheries during any statistical week of the fall salmon season. Even though WDFW was free to schedule commercial fisheries at their discretion, there are no commercial fishing days scheduled until after Labor Day in areas 2N or 2M (Table 1) in the adopted rules for the 2020.

Comment #6: Commenter disagrees with allowing commercial fishing in an area designated as a freshwater area (2U/Willapa River) with small mesh gillnet gear (6.5” maximum) larger than tangle net gear (4.25” maximum) and believe this will result in a gear conflict with the recreational fishery.

The Willapa Bay commercial area 2U is defined in WAC 220-301-020 Coast, Willapa Harbor, Grays Harbor Salmon Management and Catch Reporting Areas. Area 2U is defined as “the area including those waters of Willapa Harbor and the Willapa River estuary easterly of Area 2T, downstream and westerly from the Hwy 101 Bridge in Raymond, and excluding all waters of the South Fork Willapa River above a line at its mouth projected from the Weyerhaeuser chimney (located at 46.68927 degrees N, 123.74121 degrees W) southwesterly at a right angle to the thread of the stream to the opposite shore.” This area has been in use with the current 2U area definition since 2011. Recreational freshwater fishing begins at the mouth of the Willapa River and the mouth is defined as the South Bend boat launch in the city of South Bend. Even though these two areas overlap, the gear conflict during the early part of September has been minimal. As referenced in the 2020 interim guidance earlier in this document, the Commission suspended the Fishery Management #6 of the Fall Chinook Salmon species-specific guidance in the Willapa Bay Salmon Management Policy that states, “No commercial fisheries shall occur within areas 2T and 2U prior to September 16.” The species-specific guidance in the policy or in the interim guidance does not stipulate as to which gear type can be used at any given time period or in any specific areas. The commercial fishery is prohibited by law to block the entire river when in the act of fishing. They are required to leave a channel for others to pass and/or fish. There is only one day scheduled in the adopted rule prior to September 16 with the small mesh gillnet gear (6.5

inches maximum), and this schedule was shared with the public and the WBSAG. WDFW does not believe one day of commercial fishing in area 2U with small mesh gillnet gear prior to September 16 will result in the gear conflict perceived in the comment provided.

Conclusion

WDFW values public input and designs fisheries predicated on, in part, written or oral comments of constituents. WDFW carefully reviewed input from all sectors during the NOF public and advisory group meetings during WDFW's rule making process in accordance with the APA, which provides several mechanisms for evaluating comments and allows for revisions to the rules proposed in a CR-102. While the APA does not guarantee changes, it does provide the public with the opportunity to comment and requires WDFW to thoughtfully consider and respond to those comments, either by making further revisions or by explaining why WDFW has chosen not to do so.

The process included analysis of significant comments associated with commercial fisheries planning such as shifts in hatchery Chinook salmon production, forecasting methodology, and the maintenance of harvest rates proposed in the adopted policy C-3622. In addition, because the commercial and recreational fisheries interact, the recreational fishery planning was also considered when planning the commercial fishery including comments focusing on the effects of harvest outside of Willapa Bay, forecasting methodology, spatial and temporal distribution of fishing effort, and the interplay between bag limits and season length.

A critical piece to the fisheries planning that influenced both commercial and recreational fisheries was the Commission interim guidance for 2020, which directed WDFW to manage the Willapa Bay fisheries to a 14% harvest rate for unmarked Chinook salmon in Willapa and Naselle Rivers. This management objective goes back to the original language in the Willapa Bay Salmon Management Policy C-3622 for 2020. This strategy significantly reduced the total number of natural-origin Chinook salmon impacts available for the prosecution of both commercial and recreational fisheries.

The proposed rules are a result of integrating public, advisory, NOF comments, and meeting the primary conservation objectives identified in Policy C-3622. This year's process, complicated by the COVID stay at home order by the Governor, has shown that Department staff acted in good faith in discussions with the public and advisory groups, shared and discussed conservation and management objectives early and often, listened and considered public and advisory group input and values, and developed a fishery proposal for 2020 Willapa Bay salmon fisheries that meet conservation and management objectives identified pre-season. WDFW's 2020 Willapa Bay commercial salmon fishing regulations comply with its statutory mandate and are consistent with WDFW's management objectives for these fisheries.

Section B. Grays Harbor Commercial Salmon Fishery Regulations

Rules amended as part of this rule-making:

WAC 220-354-290 – Grays Harbor salmon fall fishery

Rules repealed as part of this rule-making:

N/A

Rules created as part of this rule-making:

N/A

5. Background/Summary of Project

This Concise Explanatory Statement (CES) describes the Washington Department of Fish and Wildlife's (WDFW's) reasons for adopting the 2020 coastal commercial salmon fishing rules and responds to public comments received on the proposed rules. The rules, once adopted, will be set forth in the Washington Administrative Code (WAC) 220-354-290. The adopted rules provide a schedule to open the 2020 fall commercial gillnet salmon fisheries (Chinook salmon, coho, and chum) in Grays Harbor.

Rule-making by WDFW is guided by resource management policies adopted by the Fish and Wildlife Commission at its regularly or specially scheduled meetings that are open to the public. Those policies can be found at: <https://wdfw.wa.gov/about/commission/policies>

In addition, WDFW's Director and staff interact with the Commission by reporting on policy implementation, and the effect of rule development and implementation, as part of the Commission's public meetings. Commission meeting agendas, and staff reports to the Commission, are available at: <https://wdfw.wa.gov/about/commission/meetings>

Due to the complexity of the annual salmon season setting process, the Commission typically delegates the authority to the Director, as authorized by law, to adopt the rules to implement the outcomes of the process while providing policy guidance as described above. For example, the North of Falcon Policy (C-3608) contains policy objectives to guide fishery rule-making and provides an expressed delegation of rule-making authority to the Director.

As discussed below, the Administrative Procedures Act (APA) envisions a rule making process by which input is solicited from the public during the preproposal phase to aid in the

development of proposed rules. This public process is then carried through as the rules, once proposed, undergo additional public review and comment. The Director employs agency staff to assist in the rule-making process but retains the final delegated decision-making authority on such rules. After consideration of the public comment received and staff recommendations, the Director signs the Rule-making Order (CR-103P) adopting the final rules.

The APA process for these proposed rules began with the filing of the Preproposal Statement of Inquiry (CR-101) on January 09, 2020 (WSR 20-03-064). Thereafter, WDFW relied upon several forums to gather information and interact with regional fishery managers and constituent groups in order to develop the proposed rules that were presented in the CR-102 filed on May 6, 2020 (WSR 20-10-112) and available for formal public review and comment.

These rule-making processes are described in more detail as follows:

North of Falcon (NOF)/Pacific Fishery Management Council (PFMC) processes used to develop proposed rules (the “Pre-notice Inquiry” stage of rule-making)

State, federal, and tribal fishery managers, and the Oregon Department of Fish and Wildlife (ODFW) work collaboratively with recreational and commercial stakeholders during the NOF and PFMC meetings to develop fishery options based on the best available science. Data and information examined and considered include expected annual salmon returns, Endangered Species Act (ESA) requirements – expressed as annual stock-specific exploitation rates, treaty fishing rights of Northwest Tribes, and resource management policies of the Fish and Wildlife Commission. The name "North of Falcon" refers to Cape Falcon, Oregon, which is the southern border of active management for Washington salmon stocks. This process consists of a series of public meetings involving federal, state, and tribal representatives, who work together with input from recreational, commercial fishing, and conservation interests.

The NOF planning process deliberately overlaps with the March and April meetings of the PFMC, the federal authority responsible for setting ocean salmon seasons within the Exclusive Economic Zone, which extends from 3 to 200 miles off the Pacific coast. Work with federal fishery managers and fishing interests in offshore waters is essential to ensure coordinated state and federal fisheries for salmon stocks that migrate freely between state and federal waters. In addition to the two PFMC meetings, the states of Washington and Oregon, and the Treaty Tribes, sponsor additional meetings to discuss alternative fishing seasons that meet conservation and harvest sharing objectives. Additionally, WDFW solicits input from advisory groups whose representatives represent a diverse range of user group interests.

The development of salmon fishing seasons begins with the completion of surveys of the previous year’s spawning grounds and hatchery return estimates by state and tribal biologists.

These biologists apportion catch in each area to specific management groups and calculate a total run-size for each group. Biologists complete this analysis, also known as a run-reconstruction, each fall or early winter. Based on total run size, and the associated survival rates, state and tribal biologists forecast the number of salmon and steelhead returning for the coming year. State and tribal biologists, in coordination with PFMC participants, typically complete the forecasts each year by late-February. From the run-size forecasts, fisheries managers determine the amount of fish available for directed or incidental harvest according to the management objectives. Once the forecasts and the number of fish available for harvest are determined, state and tribal fisheries managers begin the process of developing specific annual fishing regulation proposals to achieve, but not exceed, those harvest levels.

The first 2020 NOF public meeting specifically for Willapa Bay and Grays Harbor was held on February 27, 2020 at the Montesano City Hall in Montesano, WA. This meeting was designed to present regional forecast returns for local salmon stocks with historical data for each area and salmon species, discuss management and conservation objectives for each harbor, and collect input from the public. WDFW also presented other information that would be pertinent for 2020 salmon planning such as the Administrative Procedures Act (APA) and NOF meeting schedule. WDFW presented the statewide 2020 run forecasts for stocks originating from rivers of Puget Sound, coastal Washington, and the Columbia River on February 28, 2020 at the Department of Social and Health Services Office Building 2 Auditorium in Olympia, WA. This meeting was followed by regional breakout sessions where WDFW staff further discussed 2020 forecasts and resource utilization implications in detail. During these breakout sessions, WDFW solicited fishery suggestions from those in attendance.

There were two Grays Harbor Salmon Advisory Group meetings. The first meeting was held on April 2, 2020 via Zoom webinar due to COVID-19 pandemic. The purpose of this meeting was to provide management objectives for the 2020 season, discuss resource utilization implications, and collect input on fishing season structure for commercial and recreational fisheries. During this meeting, WDFW presented modeled outputs from fishery suggestions received to-date to the advisory group as well as information on the status of the 2020 planning process.

The second Grays Harbor Salmon Advisory Group meeting was held on April 5, 2020 via Zoom webinar due to COVID-19 pandemic. The purpose of this meeting was to refine the recreational and commercial fishery options for Grays Harbor in relation to modeled options under consideration via the PFMC process.

A final Grays Harbor PFMC Debrief Discussion was held on April 16, 2020 via Zoom webinar. The purpose of this meeting was to review the proposed fisheries developed for filing the CR-102. The meetings were open to the public with opportunity for public testimony. Notice of all

NOF public meetings were available on the WDFW website by early February and provided in a news release.

WDFW held a Grays Harbor public NOF meeting on March 24, 2020 via webinar due to COVID-19 pandemic. During this meeting WDFW provided the public with information on the 2020 season planning process. Information provided included 2020 preseason forecasts and preliminary Grays Harbor Terminal Area Management Model (TAMM) outputs from fishery suggestions received from the advisory group meeting. WDFW also engaged the public in dialog regarding fisheries, collected input on fishing season structure for commercial and recreational fisheries, and possible rule changes.

Based upon all the information and outreach generated through these forums, a draft rule was developed for consideration in the public rule-making process that follows the filing of a proposed rule. Accordingly, the CR-102 filed on May 6, 2020 (WSR 20-10-112) was the initial rule-making proposal for 2020 Grays Harbor commercial salmon fisheries.

A formal rule-making public hearing was held on June 9, 2020. The public comment period was open from May 20, 2020 through June 8, 2020 as required by the Administrative Procedures Act. WDFW received no written comments during this period.

Overall, the intent is for the 2020 Grays Harbor commercial rules package, once adopted, to replace and supersede the commercial fishing season established in 2019. Thus, the suite of rules encompassed in amended WAC 220-354-290 are a complete rules package for the 2020 fishing season consisting of those portions carried forward from 2019, together with revisions needed to update the fishing season to meet conservation and harvest objectives for 2020 based upon current forecasts of salmon abundance.

The adopted rule amends WAC 220-354-290 that opened the commercial salmon fisheries in Grays Harbor, as defined in WAC 220-301-020. It reflects 2020 conservation and allocation objectives given current year run abundance. WAC 220-354-290 specifies the fall commercial salmon season, the permissible commercial gear and methods of harvest that must be utilized. Selective fishing techniques are employed to improve the survival probability for species required to be released. In addition, the adopted rule specifies locations and durations of the fall commercial salmon season occurring between August 16 and December 31 annually.

The adopted 2020 fishing schedule is listed in Table 1 and area 2C has no proposed fishing schedule.

Table 1. Grays Harbor commercial gillnet season for 2020.

Area	Time	Date(s)
2A, 2D	7:00 a.m. through 7:00 p.m.	10/21
2A, 2D	7:00 a.m. through 7:00 p.m.	10/26
2A, 2D	7:00 a.m. through 7:00 p.m.	10/27
2A, 2D	7:00 a.m. through 7:00 p.m.	10/28

New language was added to WAC 220-354-290. In the “Gear” section of WAC 220-354-290 the following language in italics was added:

- (2) *Gillnet gear restrictions - All areas:*
 - (i) *Drift gillnet gear only.* (includes Areas 2A, 2D and 2C)

The notice of intent date in section (9)(b) of WAC 220-354-290 was changed from October 4 to October 9.

Fishery mandates and Commission Policy

The adopted rules were developed pursuant to the authorities found in RCW Title 77, including those provisions in RCW 77.04.012 that establish conservation as the paramount objective - “*to conserve the wildlife and food fish, game fish, and shellfish resources in a manner that does not impair the resource.*” Where consistent with that conservation objective, WDFW must also “*seek to maintain the economic well-being and stability of the fishing industry in the state;*” “*promote orderly fisheries;*” and “*enhance and improve recreational and commercial fishing in this state.*” These broad statewide objectives do not necessarily focus on one region, one fish species or one segment of harvesters. The term “fishing industry of the state” includes both commercial and recreational interests. While these objectives are applied on a statewide basis, WDFW considers regional interests, individual fishing sectors, and the interests of varying gear-type groups when undertaking its efforts to promote statewide management interests.

The adopted rules were also developed based upon policies of the Fish and Wildlife Commission to promote the conservation and recovery of wild salmon and sustainable fisheries:

- Hatchery and Fishery Reform – C-3619
- 2019-2023 North of Falcon (NOF) Policy – C-3608
- Willapa Bay Salmon Management Policy – C-3622
- Policy Guidelines for PFMC Representation – C-3603

Development and Implementation of the Grays Harbor Salmon Management Policy (C-3621)

The Washington Fish and Wildlife Commission adopted the Grays Harbor Basin Salmon Management policy (C-3621) in February of 2014 (effective starting March 1, 2014). This action

followed an extensive public process with multiple public input and comment opportunities. The policy provides management guidance to WDFW in terms of conservation objectives and sharing between the recreational and commercial sectors. While the policy details specific objectives, it also recognizes uncertainty inherent in fishery management, which provides guidance on the utilization of adaptive management to facilitate appropriate flexibility in the implementation of the policy guidance.

This policy provides a cohesive set of principles and guidance to promote the conservation of wild salmon and steelhead in the Grays Harbor Basin. The Commission recognized management decisions must be informed by fishery monitoring (biological and economic) and that innovation and adaptive management will be necessary to achieve the stated purpose of this policy.

6. Reasons for adopting the rules

WDFW carefully reviewed the information gathered during the rule development process together with all input (verbal and written) from fishing industry representatives, recreational anglers, the Grays Harbor Salmon Advisory Group, and the general public. This includes all information obtained during both the 2020 North of Falcon salmon season process and WDFW's formal rule-making process. WDFW considered and relied upon the best technical and scientific expertise within the agency for NOF and PFMC planning processes. WDFW fishery management experts evaluated pre-season forecast abundance of salmon stocks returning to Grays Harbor in combination with historic harvest data from fisheries occurring in the Grays Harbor watershed.

The following important characteristics of the Grays Harbor commercial salmon fishery were considered:

- Total number of licensed vessels potentially participating in each fishery.
- Number of vessels which participated in each fishery in recent years.
- Outcomes in terms of target and non-target species catch in recent years.
- Tidal cycles
- Potential transfer of effort from fisheries in other areas, e.g. Willapa Bay.
- Catch and associated conservation impacts.
- Economic value of these commercial fisheries.
- Relationship between treaty commercial, non-treaty commercial, and recreational fisheries.

Based upon this outreach and rule development process, WDFW concludes the final adopted 2020 Grays Harbor commercial fishing regulations are consistent with WDFW's statutory

management mandates, and with identified agency management objectives based upon the following rationale:

1. Fisheries will be managed with the intent of achieving escapement goals for natural origin salmon.

Fisheries modeled in Grays Harbor are expected to result in reaching or exceeding escapement goals:

- Chehalis River natural origin Chinook and natural origin coho
- Grays Harbor chum

The Humptulips River natural origin coho and Chinook did not have forecasts exceeding 10% above the escapement goal, which limited WDFW to not exceed impacts greater than 5% according to policy C-3621. Therefore, the adopted rules do not allow any directed fisheries on either stock.

Table 2: Management objectives and expected modeled results of **all** WDFW managed fisheries in Grays Harbor.

Stock	Objective Type	Objective Criteria	Expected Modeled Results
Humptulips natural-origin fall Chinook	Harvest Impact Rate	≤ 5%	3.04%
Humptulips natural-origin coho	Harvest Impact Rate	≤ 5%	2.31%

Table 3: Management objectives and expected modeled results of non-treaty WDFW managed fisheries in Grays Harbor and harvest from treaty fisheries.

Stock	Objective Type	Objective Criteria	Expected Modeled Results
Chehalis natural-origin coho	Escapement Goal	28,506	31,800
Chehalis natural-origin Chinook	Escapement Goal	9,753	9,298
Grays Harbor Chum	Escapement Goal	21,000	23,683

2. WDFW managed commercial gillnet fisheries in a fishing area or aggregate area (i.e., Area 2A/2B/2D; or Area 2C) shall be scheduled, if possible, so that in any given calendar week there are a minimum of three consecutive days when no treaty or state-managed commercial fisheries occur.

WDFW managed commercial fisheries in the adopted rule is planned so in any calendar week there are a minimum of three consecutive days when neither treaty nor state-managed commercial fisheries are scheduled to be prosecuted.

3. If it becomes apparent that a scheduled fishery will exceed its preseason catch expectation, and the overage will put at risk the attainment of conservation objectives, WDFW shall implement in-season management actions that are projected to enhance the effectiveness of fishery management relative to the attainment of the conservation objectives and impact sharing in the preseason fishery plan.

Commercial fisheries in the adopted rule will be monitored using a combination of on-board observation, daily fish ticket evaluation, and sampling landed catch. These data will be used to compare actual catch to the preseason predictions in the Grays Harbor Terminal Area Management Model (TAMM or pre-season planning model). In-season management actions will be initiated, if necessary, to attain management and conservation objectives identified in the 2020 NOF process.

4. The fishery management objectives for fall Chinook salmon:
 - Fisheries will be managed with the intent of achieving escapement goals for wild Chinook. In no case shall WDFW-managed fisheries result in an impact of more than 5% of the return when the natural origin adult return exceeds the spawning objective by less than 10% or does not achieve the natural origin spawning goals in three of the past five years.
 - The scheduled fisheries in the adopted rule is expected to have an impact of 0.02% on forecasted abundance of Humptulips River natural origin Chinook.
 - The scheduled fisheries in the adopted rule is expected to impact 21 Chehalis natural origin Chinook.
 - Limit commercial fishery impacts to the incidental harvest of fall Chinook during fisheries directed at other species.

- There are no fall Chinook directed commercial fisheries in the adopted rule. All commercial fisheries occur after the fall Chinook management period. The predicted encounters of fall Chinook are less than the predicted catch of the target species in all weeks of fishing.
5. WDFW managed commercial fisheries in the Grays Harbor Basin shall have the following impact limits:
- Areas 2A, 2B, 2D: the impact rate of the state-managed commercial fishery shall be 0.8% or less on natural origin Chehalis fall Chinook.
 - The predicted impact on Chehalis River natural origin fall Chinook in the adopted rule is 0.19%.
 - Area 2C: the impact rate of the state-managed commercial fishery shall be 5.4% or less on natural origin Humptulips fall Chinook when abundance reaches 3,779.
 - The adopted rule does not include commercial fishery opportunity in area 2C, therefore no impact will occur.
6. Humptulips River natural origin coho will be managed with the intent to limit incidental impacts from WDFW-managed fisheries targeting other stocks to 5% or less as provided in the Fishery and Species-specific Guidance in the Policy. Chehalis River natural origin coho will be managed to achieve the escapement goal.
- The expected impact of the adopted rule on Humptulips natural origin coho will be 0.22%.
 - The expected escapement of Chehalis natural origin coho after all adopted 2020 terminal fisheries (WDFW managed recreational and commercial plus treaty fisheries) will be 31,800.
7. Fisheries will be managed with the intent of achieving the escapement goal for chum salmon. No fisheries directed at chum salmon shall occur unless the adult coho salmon return exceeds spawning objectives, or if coho salmon impacts remain after coho and Chinook salmon fisheries.

The scheduled fisheries in the adopted rule are expected to result in a harvest of 2,564 Grays Harbor chum. The forecasted run size of Grays Harbor chum is 32,649. The expected escapement resulting from treaty and non-treaty fisheries is 23,683 compared to the goal of 21,000. There are remaining coho impacts which allow directed chum fisheries to occur based on Policy C-3621.

Overall, the intention is for the 2020 Grays Harbor commercial rules package, once adopted, to replace and supersede the commercial fishing season established in 2019. The 2020 season is being developed based on current abundance forecasts and are adapted to conservation needs based on these abundance forecasts. The adopted 2020 fall commercial salmon season for Areas 2A and 2D will open for four 12-hour days in late October while Area 2C will be closed. Thus, the suite of rules encompassed in amended WAC 220-354-290 are a complete rules package including a revised fishing season to meet conservation and harvest objectives based upon 2020 forecasts of salmon abundance.

7. Difference between the text of the proposed rule and the rule as adopted

No changes were made between the rule proposed in the CR-102 and the rule to be adopted in the CR-103P.

8. Public Comments, response to comments, and consideration of comments

There were no written or oral comments received during the CR-102 (WSR 20-10-112) open public comment period from May 20, 2020 through June 8, 2020 or during the June 9, 2020 public hearing.

WDFW also provided significant opportunity for the public to informally provide input on recreational and commercial fishing seasons in Grays Harbor through public and advisory meetings. During this process, there were many suggestions and fishery recommendations. These suggestions and recommendations were evaluated for compliance with agency policy guidance. One suggestion was heard at several meetings and worth noting below.

Fishery suggestion to open non-treaty commercial fishery in catch area 2B to access available chum.

Fishery options for Area 2B were not included in the proposed rules due to higher encounter rates on the constraining stocks, natural-origin Humptulips fall Chinook and Humptulips coho, and corresponding restrictions to commercial and recreational opportunities in other areas. Area 2B fishery options were modeled for potential harvest opportunities and impacts on non-targeted constraining stocks during the NOF process. Opportunities were also modeled for options in other commercial fishing areas. These modeling exercises showed harvest opportunities in 2B were lower than other options while still achieving conservation and sharing principles in Policy C-3621.

Conclusion

WDFW carefully reviewed input from all sectors during the North of Falcon public and advisory group meetings during the rule-making process, which included analysis of significant comments associated with commercial fisheries planning such as fishing opportunity in area 2B. The adopted rules are a result of integrating public, advisory, and North of Falcon comments, meeting the primary conservation objectives identified in policy C-3621. WDFW's 2020 Grays Harbor commercial salmon fishing regulations comply with its statutory mandate and are consistent with WDFW's management objectives for these fisheries.