

# **Concise Explanatory Statement (CES) for 2021 Coastal Commercial Salmon Fishery Regulations**

The Washington Department of Fish and Wildlife (WDFW) filed the Preproposal Statement of Inquiry (CR-101) on January 6, 2021 (WSR 21-02-082), and the Proposed Rulemaking (CR-102) for the 2021 Coastal Commercial Salmon Fishery on May 19, 2021 (WSR 21-11-103). 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 rulemaking:**

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

### **Rules repealed as part of this rulemaking:**

N/A

### **Rules created as part of this rulemaking:**

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 2021 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 2021 fall commercial gillnet salmon fisheries (Chinook salmon, coho, and chum) in Willapa Bay.

Rulemaking by WDFW is guided by resource management policies adopted by the Fish and Wildlife Commission (FWC) 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 rulemaking and provides an expressed delegation of rule-making authority to the Director.

As discussed below, the Administrative Procedure Act (APA) sets forth 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 Administrative Procedure Act (APA) process for these proposed rules began with the filing of the Preproposal Statement of Inquiry (CR-101) on January 06, 2021 (WSR 21-02-082). 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 19, 2021 (WSR 21-11-103) 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 rulemaking)

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 FWC. 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 2021 NOF public meeting specifically for Willapa Bay and Grays Harbor was held virtually on February 25, 2021 via Zoom. 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 2021 salmon planning such as the APA and NOF meeting schedule.

WDFW presented the statewide 2021 run forecasts for stocks originating from rivers of Puget Sound, coastal Washington, and the Columbia River on February 26, 2021 virtually via Zoom. This meeting was followed by regional breakout sessions where WDFW staff further discussed 2021 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 17, 2021 virtually via Zoom. The purpose of this meeting was to provide the public with information on the 2021 NOF process and ocean quota, discuss management and conservation objectives, review initial Willapa Bay terminal area management model (TAMM) runs, engage the public in dialog regarding fisheries, and collect public input on fishing season structures for the commercial and recreational fisheries.

WDFW held another regionally focused Willapa Bay public meeting on April 5, 2021 virtually via Zoom. The purpose of this discussion was to review the management and conservation objectives, provide and discuss results of proposed model runs using the TAMM, and collect public input in the form of fishery proposals from those in attendance.

Finally, WDFW held the last public meeting specific to Willapa Bay on April 12, 2021 virtually via Zoom. The purpose of this discussion was to provide an update on the technical correction made to fishery models, review previous model runs with the correction, further discuss fishery proposals evaluated using the Willapa Bay TAMM received to-date, and collect additional public input regarding fishery proposals.

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 19, 2021 (WSR 21-11-103) described WDFW's proposed rules for the 2021 Willapa Bay commercial salmon fisheries.

A formal rule-making public hearing was held on June 22, 2021. The public comment period was open from May 19, 2021 through June 22, 2021 as required by the Administrative Procedure Act. WDFW received one written comment on this rulemaking during this period and no one testified at the public hearing.

The intent for the 2021 Willapa Bay commercial rules package, once adopted, is to replace and supersede the commercial fishing season established in 2020. Thus, the suite of rules encompassed in amended WAC 220-354-250 are a complete rules package for the 2021 fishing season consisting of those portions carried forward from 2020, together with revisions needed to update the fishing season to meet conservation and harvest objectives for 2021 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 2021, approximately 24 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 2021.

<u>Area</u>	<u>Time</u>	<u>Dates</u>	<u>Maximum Mesh Size</u>
2N	6 a.m. – 6 p.m.	8/20	4.25”
2N, 2M	6 a.m. – 6 p.m.	8/27, 9/3, 9/10	4.25”
2N	7 a.m. – 7 p.m.	9/12, 9/14	4.25”
2M	7 a.m. – 7 p.m.	9/14	4.25”
2N, 2M, 2T, 2U	7 a.m. – 7 p.m.	9/16	4.25”
2N, 2T, 2U	7 a.m. – 7 p.m.	9/18	4.25”
2N, 2M, 2T, 2U	7 a.m. – 7 p.m.	9/21, 9/24	6.5”
2N, 2T, 2U, 2R	7 a.m. – 7 p.m.	9/22	6.5”
2N, 2T	7 a.m. – 7 p.m.	9/25	6.5”
2N, 2M, 2U	7 a.m. – 7 p.m.	9/28, 10/1	6.5”
2N, 2T, 2U, 2R	7 a.m. – 7 p.m.	9/29	6.5”
2T	7 a.m. – 7 p.m.	10/1	6.5”
2N, 2U	7 a.m. – 7 p.m.	10/2	6.5”
2N, 2M, 2T, 2U, 2R	7 a.m. – 7 p.m.	10/5	6.5”
2N, 2M, 2U	7 a.m. – 7 p.m.	10/7	6.5”
2N, 2M, 2T, 2U, 2R	7 a.m. – 7 p.m.	10/12	6.5”
2N, 2T, 2U	7 a.m. – 7 p.m.	10/14	6.5
2N, 2M, 2T, 2U, 2R	7 a.m. – 7 p.m.	10/19	6.5”
2N, 2T, 2U	7 a.m. – 7 p.m.	11/1	6.5”
2N, 2M, 2T, 2U	7 a.m. – 7 p.m.	11/8	6.5”
2N, 2M, 2U	7 a.m. – 7 p.m.	11/15	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 FWC to promote the conservation and recovery of wild salmon and sustainable fisheries:

- Anadromous Salmon and Steelhead Hatchery Policy – C – 3624
- 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 most 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 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.

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 Willapa Bay Salmon Advisory Group (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.

During a review that occurred in 2014 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 information gathered for the proposed 2021 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 August 20, 2021 through November 15, 2021, 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 forecasted runsize for 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). Guidance provided from the FWC regarding the Willapa Bay Salmon Management Policy (C-3622) for 2021 directs the department to allow a commercial salmon fishery in the south bay, specifically areas 2N and 2M in August only. Other commercial areas will not open until after September 16<sup>th</sup>, according to the policy.

Fishing dates and locations were modeled to account for incidental encounters of non-target salmon 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 27, 2021, WDFW provided the FWC with a 2020 fishery post-season review. On March 12, 2021, the Commission provided WDFW with additional guidance on the implementation of Policy C-3622 for the 2021 season. The general guidance provided by Commission was to adopt staff recommendations regarding the hatchery program and fisheries management for Willapa Bay in 2021. 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 20% total impacts for natural-origin Chinook salmon on Willapa River;
- Actively manage to not exceed 20% total impacts for natural-origin Chinook salmon on Naselle River;
- Actively manage to meet the aggregate escapement goals for Coho and 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.
- Suspend time and area restrictions for commercial fisheries south of commercial area 2T;
- Allow WDFW the flexibility to determine daily limits for Chinook salmon that is appropriate within the 20% harvest rate and coho in the recreational fishery;
- 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;
  - 400,000 at Forks Creek Hatchery
  - 3.3 million at Nemah Hatchery
  - 5 million at Naselle Hatchery
- Release hatchery production at their facility of origin to allow for the preservation of future options for long term policy modifications.

This added guidance applies only to 2021. All other items in the Willapa Bay Salmon Management Policy, C-3622, will remain in effect for 2021, 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 2021 Willapa Bay commercial fisheries were evaluated with respect to objectives in the policy and the additional guidance provided by the Commission for the 2021 salmon season only. These objectives were shared with industry representatives, stakeholders, 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 2N, 2M, 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 2021 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 (2021 pre-season forecast natural-origin Chinook salmon, 3,924, spawner goal, 4,353). The scheduled fisheries in the proposed rule are expected to result in 3,517 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 8.8% and 17.6% 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 14,503 natural origin coho and 35,910 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 36,262, 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 2021.

Therefore, the commercial fisheries in the adopted rule are scheduled to begin on August 20 in

commercial catch are 2N, August 27, 2021 in commercial catch area 2M, September 16, 2021 in commercial catch areas 2T and 2U, and September 22 in commercial area 2R.

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 21-11-114). Beginning in 2015, the recreational fishery provided meaningful opportunity with increased daily limits, opened historically closed areas, and extended freshwater seasons. Due to lower natural and hatchery origin coho forecasts for 2021, 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 2021 for further detail.

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

Commercial fisheries are expected to catch 3,111 hatchery Chinook salmon in 2021, while predicted natural origin fall Chinook salmon exploitation rates for commercial fisheries from the Willapa Bay TAMM are 4.7% for Willapa and North rivers and 14.7% for Naselle River after accounting for recreational fishery harvest and impacts. Thus, commercial fisheries utilize 53.2% and 83.3% 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 March 12, 2021, the Commission provided WDFW with additional guidance on the implementation of policy C-3622 for the 2021 season. The general guidance provided by the Commission directed WDFW to:

- Actively manage to not exceed 20% total impacts for natural-origin Chinook salmon on Willapa River;
- Actively manage to not exceed 20% total impacts for natural-origin Chinook salmon on Naselle River;
- Achieve natural origin coho spawner escapement; and
- Achieve naturally spawning chum escapement.

The predicted impact on Willapa River fall Chinook salmon terminal fisheries is 8.8%. The predicted impact on Naselle River fall Chinook salmon terminal fisheries is 17.6% (Table 2).

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

The 2021 pre-season forecast used in season planning for Willapa Bay natural origin coho is 17,598 fish compared to a spawner escapement goal of 13,600. The scheduled fisheries in the adopted rule are expected to result in 14,503 Willapa Bay natural origin coho spawners.



Table 2. Escapement goal and exploitation rate objectives for salmon fisheries in Willapa Bay for the 2021 season.

<b>Stock</b>	<b>Objective Type</b>	<b>Objective Criteria</b>	<b>Modeled Result</b>
Willapa Bay natural origin coho	Escapement Goal	13,600	14,503
Willapa Bay naturally spawning chum	Escapement Goal	35,400	36,262
Willapa River natural origin Chinook	Exploitation Rate	< 20%	8.8%
North River Natural origin Chinook	Exploitation Rate	< 20%	8.8%
Naselle River Natural origin Chinook	Exploitation Rate	< 20%	17.6%

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 five of the last six 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 for 2021 is to meet or exceed the naturally spawning escapement goal of 35,400. The predicted naturally spawning escapement for Willapa Bay Chum is 36,262 in the adopted rule.

Table 3. Estimated chum naturally spawning escapements for 2015-2020. Bold values indicate estimated escapement exceeds the escapement goal.

Year	Estimated Escapement: Goal 35,400
2015	<b>44,147</b>
2016	<b>78,725</b>
2017	20,191
2018	<b>38,582</b>
2019	<b>40,893</b>
2020	<b>52,747</b>

WDFW staff considered the available relevant data and public input surrounding the 2021 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 2021; do not exceed 20% mortality rate on natural-origin Chinook salmon for Willapa and Naselle Rivers separately, meet or exceed the natural-origin and naturally spawning escapement goals for coho and Chum, respectively.

Commercial catch will be allowed in August per FWC guidance for 2021 in the south bay, areas 2N and 2M, with all other commercial areas not open until after September 16<sup>th</sup>. With the increase in Chinook production at the Naselle Hatchery, the FWC directed WDFW to implement test fisheries to determine Chinook stock composition in August to further improve in-season update tools. The 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 continue to reduce conflict in the upper area of the bay between the recreational and commercial sectors by prohibiting commercial fishing in areas frequented by recreational anglers. Finally, the proposed rules are expected to result in over \$298,400 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 2021 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 22, 2021 via webinar to maintain social distance during this COVID-19 pandemic. The public comment period was open May 19, 2021 through June 22, 2021, as required by the Administrative Procedure Act (APA). This hearing provided the public with an opportunity to comment on the proposed rules published in WSR 21-11-103 (WAC 220-354-250, Willapa Bay salmon fall fishery).

One written comment was received during the public comment period regarding the proposed Willapa Bay commercial fishery through WDFW's online portal. No public comments were provided 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, and the 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 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.

Public comments received during the rule-making period have been summarized into the following points with WDFW's response(s) below.

*Comment #1: Commenter expressed concern over another temporary amendment to the Willapa Bay policy providing guidance to the Department for setting seasons in Willapa Bay.*

The decisions made that guide the Willapa Bay Salmon Management Policy C-3622 is determined by the Fish and Wildlife Commission. The recent 2021 guidance from the FWC directed the Department to utilize the following management objectives; fisheries should not exceed a harvest rate of 20% on natural origin Chinook for Willapa and Naselle rivers, suspend time and area restrictions for commercial fisheries south of commercial area 2T, allow WDFW the flexibility to determine daily limits for Chinook salmon that is appropriate within the 20% harvest rate and coho in the recreational fishery, provide species harvest prioritization, provide for hatchery broodstock necessary for a Chinook smolt release and release hatchery production at their facility of origin to allow for the preservation of future options for long term policy modifications.

*Comment #2: Commenter objects to planning fisheries near the 20% management objective on natural origin Chinook.*

In the absence of a compelling basis to seek further guidance from the Commission, WDFW staff intends to follow interim guidance provided by the Fish and Wildlife Commission for 2021. The management objectives determined by the FWC for 2021 was to actively manage to not exceed a 20% harvest rate on natural origin Chinook for Willapa and Naselle rivers. The current harvest rates in the adopted rule are 8.8% and 17.6% for Willapa and Naselle natural origin Chinook, respectively. The current objectives in this fishery proposal are under the 20% management objective threshold identified by the FWC. The commenter provided no compelling basis to deviate from this interim conservation objective.

*Comment #3: Several commenters suggested closing all salmon fishing for 2021 to meet all management objectives.*

WDFW's mission is to preserve and protect fish, wildlife, and ecosystems, while providing sustainable hunting and fishing opportunities for commercial interests and millions of residents. The Willapa Bay fisheries package proposal for 2021 offered allowable harvest for commercial and freshwater opportunity. The fishery proposal meets all FWC directed management objectives for 2021. Closing all salmon fishing opportunity in Willapa Bay would increase the total number

of hatchery salmon reaching the spawning grounds, increase the percentage of hatchery spawners, and increase competition for natural fish to spawn. These results would have a negative impact on conservation objectives for increasing natural origin salmon.

### Conclusion

WDFW values public input and designs fisheries predicated on, in part, written and oral comments of constituents. WDFW carefully reviewed input from all sectors during the NOF public meetings throughout WDFW's rule making process in accordance with the APA. The APA process 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 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 daily limits and season length.

A critical piece to the fisheries planning that influenced both commercial and recreational fisheries was the Commission interim guidance for 2021, which directed WDFW to manage the Willapa Bay fisheries not to exceed a 20% harvest rate for natural origin Chinook salmon in Willapa and Naselle rivers. This management objective is similar to the management objective used in Phase I of the Willapa Bay Salmon Management Policy C-3622 from 2015-2018. This management objective provided for an increase in the total number of natural original Chinook salmon impacts available for the prosecution of both the commercial and recreational fisheries compared to last year. In 2020, the FWC directed the Department to manage to a 14% harvest rate for natural origin Chinook salmon in the Willapa and Naselle rivers, which significantly reduced the total number of natural origin Chinook salmon impacts available to undertake fisheries. The Commission guidance reflects a reasonable rate of harvest, while ensuring long term conservation objectives are attained.

The proposed rules are a result of integrating public comments and meeting the primary conservation objectives identified in Policy C-3622 and by the FWC interim guidance regarding management objectives for 2021. This year's process, complicated by the COVID pandemic, has shown that Department staff acted in good faith in discussions with the public, shared and

discussed conservation and management objectives early and often, listened and considered public input and values, and developed a fishery proposal for the 2021 Willapa Bay salmon fisheries that meet conservation and management objectives identified preseason. WDFW's 2021 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 rulemaking:**

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

### **Rules repealed as part of this rulemaking:**

N/A

### **Rules created as part of this rulemaking:**

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 2021 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 2021 fall commercial gillnet salmon fisheries (Chinook salmon, coho, and chum) in Grays Harbor.

Rulemaking by WDFW is guided by resource management policies adopted by the Fish and Wildlife Commission (FWC) 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 rulemaking and provides an expressed delegation of rule-making authority to the Director.

As discussed below, the Administrative Procedure 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 6, 2021 (WSR 21-02-082). 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 19, 2021 (WSR 21-11-103) 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 rulemaking)

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 the public representing 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 2021 NOF public meeting specifically for Willapa Bay and Grays Harbor was held on February 25, 2021 via Zoom webinar due to COVID-19 pandemic. 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 2021 salmon planning such as the Administrative Procedure Act (APA) and NOF meeting schedule. WDFW presented the statewide 2021 run forecasts for stocks originating from rivers of Puget Sound, coastal Washington, and the Columbia River on February 26, 2021 via Zoom webinar due to COVID-19 pandemic. This meeting was followed by regional breakout sessions where WDFW staff further discussed 2021 forecasts and resource utilization implications in detail. During these breakout sessions, WDFW solicited fishery suggestions from those in attendance.

WDFW held a Grays Harbor public NOF meeting on March 24, 2021 via webinar due to COVID-19 pandemic. During this meeting WDFW provided the public with information on the 2021 season planning process. Information provided included 2021 preseason forecasts, 2021 PFMC Proposed Ocean Alternatives, Marine Areas 1-4 Annual Ocean Quotas, and recent Grays Harbor and North Coast Trends. WDFW also engaged the public in dialog regarding fisheries, collected input on fishing season structure for commercial and recreational fisheries. Notice of all NOF public meetings were available on the WDFW website by early February and provided in a news release.

A Grays Harbor NOF Fisheries Discussion was held on April 6, 2021 via Zoom webinar. The purpose of this meeting was to review proposed fisheries and fishery suggestions provided by the public during the first Grays Harbor NOF meeting and any received in written form or by phone.

A final Grays Harbor NOF Fisheries Discussion was held on April 12, 2021 via Zoom webinar. The purpose of this meeting was to review the preliminary fisheries developed for filing the CR-102 and engaged the public in dialog regarding these preliminary fisheries.

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 May 19, 2021 (WSR 21-11-103) was the initial rule-making proposal for 2021 Grays Harbor commercial salmon fisheries.

A formal rule-making public hearing was held on June 22, 2021. Public comments were open from May 19, 2021 through June 22, 2021 as required by the Administrative Procedure Act. WDFW received one written comment during this period.

Overall, the intent is for the 2021 Grays Harbor commercial rules package, once adopted, to replace and supersede the commercial fishing season established in 2020. Thus, the suite of rules encompassed in amended WAC 220-354-290 are a complete rules package for the 2021 fishing season consisting of those portions carried forward from 2020, together with revisions needed to update the fishing season to meet conservation and harvest objectives for 2021 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 2021 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 2021 fishing schedule is listed in Table 1.

Table 1. Grays Harbor commercial gillnet season for 2021.

Area	Time	Date(s)
2A, 2D	7:00 a.m. through 7:00 p.m.	10/25
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	Noon through 11:59 p.m.	11/2
2A, 2D	7:00 a.m. through 7:00 p.m.	11/3
2C	Noon through Noon	10/17 through 10/20
2C	6:00 a.m. through 6:00 a.m.	10/24 through 10/26

The notice of intent date in section (9)(b) of WAC 220-354-290 was changed from October 9 to October 11.

### 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:

- Anadromous Salmon and Steelhead Hatchery Policy C-3624
- 2019-2023 North of Falcon (NOF) Policy – C-3608
- Grays Harbor Basin Salmon Management Policy C-3621
- 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, and the public. This includes all information obtained during both the 2021 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 2021 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
- Grays Harbor chum
- Humptulips River natural origin Chinook

The Humptulips River natural origin coho did not have a forecast exceeding 10% above the escapement goal, which limited WDFW to not exceed impacts greater than 5% according to policy C-3621.

The Chehalis River natural origin coho did not meet the escapement goal three out of the last five years. Based on conservation guidelines in policy C-3621, WDFW managed Grays Harbor fisheries will not exceed impacts greater than 5%.

Table 2: Management objectives and expected modeled results of **all** WDFW managed fisheries in Grays Harbor (does not include modeled treaty fishery impacts).

<b>Stock</b>	<b>Objective Type</b>	<b>Objective Criteria</b>	<b>Expected Modeled Results</b>
Humptulips natural origin fall Chinook	Escapement Goal	3,573	4,529
Humptulips natural origin coho	Harvest Impact Rate	≤ 5%	3.00%
Chehalis natural-origin Chinook	Escapement Goal	9,753	10,539
Chehalis natural origin coho	Harvest Impact Rate	≤ 5%	4.99%
Grays Harbor Chum	Escapement Goal	21,000	39,081

- 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.

- 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 2021 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.
    - 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 impacts:
  - Areas 2A, 2B, 2D: the predicted impact on Chehalis River natural origin fall Chinook in the adopted rule is 0.04%.
  - Area 2C: the predicted impact on Humptulips River natural origin fall Chinook in the adopted rule is 0.42%.
6. Humptulips and Chehalis River natural origin coho stocks 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.
  - The expected impact of the adopted rule on Humptulips natural origin coho will be 0.65% and 1.14% on Chehalis natural origin coho.
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 2,379 Grays Harbor chum. The forecasted run size of Grays Harbor chum is 42,248. The expected escapement resulting from non-treaty fisheries is 39,081 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 2021 Grays Harbor commercial rules package, once adopted, to replace and supersede the commercial fishing season established in 2020. The 2021 season

is being developed based on current abundance forecasts and are adapted to conservation needs based on these abundance forecasts. The adopted 2021 fall commercial salmon season for Areas 2A and 2D will open for five 12-hour days in late October and early November, while Area 2C will be open for six 24-hour days in late October. 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 2021 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 was one written comment received during the CR-102 (WSR 21-11-103) open public comment period from May 19, 2021 through June 22, 2021 and zero oral comments received during the June 22, 2021 public hearing.

*Comment # 1: Please do not allow Chinook fishing until endangered Chinook and Southern Resident Killer Whales (SRKW) are recovered, and limit fishing to fisheries terminals for better management of all stock. Please consider this recent scientific assessment regarding cumulative effects, lack of prey being a major impact on the survival of SRKW:*  
<https://www.sciencedirect.com/science/article/pii/S0006320721001762>

The salmon fishery package proposed for 2021 was evaluated by the National Marine Fisheries Service (NMFS) in relation to recovery of ESA listed species including Chinook salmon and Southern Resident Killer Whales (SRKW). The evaluation of the proposed 2021 salmon fishery package resulted in a determination that the suite of fisheries would not impede recovery of any ESA listed species.

Furthermore, the Governor's Salmon Task Force State of Salmon Report concluded that fishery impacts are not the limiting factor in achieving recovery of ESA listed Chinook salmon. The State of Salmon report clearly states that fisheries are not impeding recovery: "While important during the initial federal listings, today harvest in Washington has been curtailed significantly and is not a primary factor limiting salmon recovery. Fishing in Washington State is highly managed and relies primarily on hatcheries. In addition, a significant portion of the overall harvest of salmon originating from Washington occurs in Canada and Alaska. Protection and restoration of habitat, addressing predation, and mitigating the impacts from climate change must be pursued to fully benefit from the restrictions that have been applied to fishing for recovery."

Fishery impacts to ESA listed stocks were reviewed and approved by NMFS through the annual Biological Opinion (BIOP) and annual ESA authorization issued by NOAA. No jeopardy was found to either SRKW or ESA listed Chinook stocks. It was found that today harvest in Washington has been curtailed significantly and is not a primary factor limiting salmon recovery. Fishing in Washington State is highly regulated and relies primarily on hatcheries.

Specifically regarding SRKW, in April of 2019, the Pacific Fishery Management Council established the SRKW Ad Hoc Workgroup with the task of reassessing the effects of PFMC fisheries on SRKW and if needed, developing proposed conservation measures or management tools that would limit PFMC fishery impacts to Chinook salmon, the whales' primary prey. The workgroup included representatives of WDFW, NMFS, PFMC, Washington Coastal treaty tribes, and state fish and wildlife agencies from Oregon, California and Idaho. The workgroup built on existing knowledge of whale and Chinook abundance and distribution to develop new modeling tools for evaluation of relationships between SRKW demography and indices of regional Chinook abundance. The workgroup undertook that work through a number of public meetings in 2019 and 2020, with periodic progress reports provided to PFMC throughout that time.

Two primary documents were produced by the workgroup. The first was a risk assessment document that provides background on PFMC fisheries and SRKW, and presents the modeling and analysis approach that was developed by the workgroup and used to evaluate potential times and areas where Chinook abundance (and corresponding fishery removals) could potentially affect SRKW population demographics.

<https://www.pcouncil.org/documents/2020/05/e-2-srkw-workgroup-report-1-pacific-fishery-management-council-salmon-fishery-management-plan-impacts-to-southern-resident-killer-whales-risk-assessment-electronic-only.pdf/>

The second document presented a range of management alternatives and recommendations that were developed for the Council's consideration. Although no strong statistical links between Chinook abundance and SRKW demographics were found in the risk assessment, the workgroup recommended measures designed to be precautionary and conservative in years of low Chinook abundance given observed trends in SRKW populations.

<https://www.pcouncil.org/documents/2020/10/f-2-a-srkw-workgroup-report-1-pacific-fishery-management-council-salmon-fishery-management-plan-impacts-to-southern-resident-killer-whales-draft-range-of-alternatives-and-recommendations-with-strik.pdf/>

In November 2020, the PFMC adopted a final preferred alternative to address the effect of Council-area fisheries on SRKW. This alternative included a management threshold for Chinook abundance in the area North of Cape Falcon. In years when abundance is predicted to be below that threshold, a number of management actions intended to reduce potential effects of fisheries will be implemented through annual regulations. Those actions include additional limits to



quotas North of Cape Falcon as well as area fishery closures in times and places that may be important to SRKW. These actions are under review by NMFS and are being incorporated into PFMC's Pacific Coast Salmon Management Plan. Details of the actions are listed in the Council's Decision Document from their November 2020 meeting.

<https://www.pccouncil.org/november-2020-decision-summary-document/>

In 2018, the Orca Task Force developed 16 recommendations that addressed threats to SRKW persistence and recovery. Of these, Recommendation #6 includes a significant increase in hatchery production to benefit SRKWs in a manner consistent with existing state and federal policies. The increased hatchery production goal is 50 million smolts, based on 2018 production levels. To meet this goal, since 2018 the Washington Department of Fish and Wildlife (WDFW), as well as several tribes and one utility, have increased hatchery production of Chinook Salmon, Coho Salmon (*O. kisutch*), and Chum Salmon (*O. keta*) at existing facilities through modified operations and maximized facility use, in an effort to increase prey abundance for the endangered SRKW. Combined, salmonid production goals under all programs from 2019 to 2020 have increased by 26,075,200 salmon (of all species) compared to production levels prior to 2018 (WDFW 2019). Specific to Chinook Salmon, the 2019 production goal for WDFW facilities was 9,125,000 fish. This annual Chinook Salmon production goal was specifically intended to increase prey for SRKWs. The WDFW established similar Chinook Salmon production goals for 2020 and beyond.

Legislative direction and funding from the general state appropriation for fiscal year 2021 was provided for WDFW to conduct a master planning process. In summary, this Master Plan identifies a Chinook Salmon production increase of approximately 36.425 million fish from improvements at existing facilities and from two new state hatchery facilities (Deschutes River Hatchery and Cowlitz River State Salmon Hatchery) that would support SRKW prey production. With WDFW's ongoing annual program of over 9.125 million Chinook Salmon for SRKW prey enhancement, plus 5.35 million Chinook Salmon from tribal and utility production initiated in 2018, the total potential Chinook Salmon (approximately 51 million) now exceeds the EO 18-02 goal of 50 million Chinook Salmon smolts. However, it demonstrates that the goal of EO 18-02 is achievable with the recommended Chinook Salmon production pathways presented in this Master Plan.

WDFW also provided significant opportunity for the public to informally provide input on recreational and commercial fishing seasons in Grays Harbor through public meetings. During this process, there were many suggestions and fishery recommendations. These suggestions and recommendations were evaluated in relation to agency policy.

### 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 and modeling of

significant comments associated with commercial fisheries planning process. 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 2021 Grays Harbor commercial salmon fishing regulations comply with its statutory mandate and are consistent with WDFW's management objectives for these fisheries.