



# PROPOSED RULE MAKING

## CR-102 (July 2022) (Implements RCW 34.05.320) Do NOT use for expedited rule making

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER  
STATE OF WASHINGTON  
FILED

DATE: July 18, 2023

TIME: 1:11 PM

WSR 23-15-096

**Agency:** Washington State Department of Fish and Wildlife (WDFW P2023-12)

- Original Notice**
- Supplemental Notice to WSR** \_\_\_\_\_
- Continuance of WSR** \_\_\_\_\_

- Preproposal Statement of Inquiry was filed as WSR 23-11-100 on May 19, 2023 ; or**
- Expedited Rule Making--Proposed notice was filed as WSR \_\_\_\_\_; or**
- Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1); or**
- Proposal is exempt under RCW \_\_\_\_\_.**

**Title of rule and other identifying information:** (describe subject) Revising the WACs for the Emerging Commercial Fishery in the Lower Columbia River.

**Hearing location(s):**

Date:	Time:	Location: (be specific)	Comment:
August 22, 2023	1:00pm-2:30pm	In-person at WDFW Region 5 Ridgefield Office 5525 S 11th Street Ridgefield, WA 98642 and virtually	<a href="https://us02web.zoom.us/webinar/register/WN_D_9Qg-IRz-dVH_QQJuhvA">https://us02web.zoom.us/webinar/register/WN_D_9Qg-IRz-dVH_QQJuhvA</a>

**Date of intended adoption:** On or after August 23, 2023 (Note: This is **NOT** the **effective** date)

**Submit written comments to:**

Name: Kelly Henderson  
 Address: P.O. Box 43200, Olympia, WA 98504  
 Email: [emerging-commercial-fisheries@PublicInput.com](mailto:emerging-commercial-fisheries@PublicInput.com)  
 Fax:  
 Other: Website: <https://publicinput.com/emerging-commercial-fisheries> Phone# for voicemail comments: 855-925-2801  
 project code 5016  
 By (date) August 22, 2023

**Assistance for persons with disabilities:**

Contact VI/ADA Compliance Coordinator  
 Phone: (360) 902-2349  
 Fax:  
 TTY: 711  
 Email: Title6@dfw.wa.gov  
 Other:  
<https://wdfw.wa.gov/accessibility/requestsaccommodation>  
 By (date) August 8, 2023

**Purpose of the proposal and its anticipated effects, including any changes in existing rules:** The purpose of this rule is to adjust the timing of participant selection and the timing for in-hand gear requirements to allow fishers sufficient time to secure gear before the recreational season begins. In addition, this rule will clarify conditions pertaining to the successful fisher applicants.

**Reasons supporting proposal:** These revisions come at the request of the recreational fishing industry given their timeline constraints and commitments with the public purchasing the required fishing gear. The revisions also provide detailed conditions pertaining to applicant requirements for those considering applying for the lottery and expectations for successfully chosen applicants ahead of a potential 2024 fishery (and future fisheries). These conditions for both successful applicants and DFW provides measured steps to improve fishing participation and essential data collection from the fishery for management and evaluation purposes.

**Statutory authority for adoption:** RCW 77.04.012, 77.04.020, 77.04.130, 77.12.045, 77.12.047, 77.70.160, 77.50.030, 77.65.400

**Statute being implemented:** RCW 77.70.160

**Is rule necessary because of a:**

Federal Law?  Yes  No

Federal Court Decision?  Yes  No

State Court Decision?  Yes  No

If yes, CITATION:

**Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters:** Gear, season, and permit specifications associated with the Emerging Commercial Fishery will be decided annually based on salmon and steelhead run sizes, availability of impacts to listed species under the Federal Endangered Species Act and as part of the North of Falcon and Compact processes.

**Type of proponent:**  Private  Public  Governmental  
**Name of proponent:** (person or organization) Washington State Department of Fish and Wildlife

**Name of agency personnel responsible for:**

	Name	Office Location	Phone
Drafting:	Charlene Hurst	Ridgefield, WA	360-605-0536
Implementation:	Ryan Lothrop	Olympia, WA	360-902-2808
Enforcement: Captain	Captain Jeff Wickersham;	Ridgefield, WA; Montesano, WA	360-696-6211

**Is a school district fiscal impact statement required under [RCW 28A.305.135](#)?**  Yes  No

If yes, insert statement here:

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

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

**Is a cost-benefit analysis required under [RCW 34.05.328](#)?**

Yes: A preliminary cost-benefit analysis may be obtained by contacting:  
Name:  
Address:  
Phone:  
Fax:  
TTY:  
Email:  
Other:

No: Please explain: Under RCW 34.05.328 (5), a cost-benefit analysis is not required for this rule as DFW is not implementing RCW 77.55 with this rule.

**Regulatory Fairness Act and Small Business Economic Impact Statement**  
Note: The [Governor's Office for Regulatory Innovation and Assistance \(ORIA\)](#) provides support in completing this part.

**(1) Identification of exemptions:**  
This rule proposal, or portions of the proposal, **may be exempt** from requirements of the Regulatory Fairness Act (see [chapter 19.85 RCW](#)). For additional information on exemptions, consult the [exemption guide published by ORIA](#). Please check the box for any applicable exemption(s):

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

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

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

- This rule proposal, or portions of the proposal, is exempt under [RCW 19.85.025\(3\)](#). Check all that apply:
- |   |  |
|---|--|
| <input type="checkbox"/> <a href="#">RCW 34.05.310</a> (4)(b)<br>(Internal government operations) | <input type="checkbox"/> <a href="#">RCW 34.05.310</a> (4)(e)<br>(Dictated by statute)   |
| <input type="checkbox"/> <a href="#">RCW 34.05.310</a> (4)(c)<br>(Incorporation by reference)     | <input type="checkbox"/> <a href="#">RCW 34.05.310</a> (4)(f)<br>(Set or adjust fees)  |
| <input type="checkbox"/> <a href="#">RCW 34.05.310</a> (4)(d)<br>(Correct or clarify language)    | <input type="checkbox"/> <a href="#">RCW 34.05.310</a> (4)(g)<br>((i) Relating to agency hearings; or (ii) process requirements for applying to an agency for a license or permit) |
- This rule proposal, or portions of the proposal, is exempt under [RCW 19.85.025\(4\)](#) (does not affect small businesses).
- This rule proposal, or portions of the proposal, is exempt under RCW \_\_\_\_\_.

Explanation of how the above exemption(s) applies to the proposed rule:

**(2) Scope of exemptions:** *Check one.*

- The rule proposal is fully exempt (*skip section 3*). Exemptions identified above apply to all portions of the rule proposal.
- The rule proposal is partially exempt (*complete section 3*). The exemptions identified above apply to portions of the rule proposal, but less than the entire rule proposal. Provide details here (consider using [this template from ORIA](#)):
- The rule proposal is not exempt (*complete section 3*). No exemptions were identified above.

**(3) Small business economic impact statement:** *Complete this section if any portion is not exempt.*

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

- No Briefly summarize the agency's minor cost analysis and how the agency determined the proposed rule did not impose more-than-minor costs. \_
- Yes Calculations show the rule proposal likely imposes more-than-minor cost to businesses and a small business economic impact statement is required. Insert the required small business economic impact statement here:

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

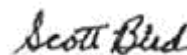
Name:  
Address:  
Phone:  
Fax:  
TTY:  
Email:  
Other:

**Date:** 7/18/2023

**Name:** Scott Bird

**Title:** Agency Rules Coordinator

**Signature:**



**WAC 220-360-520 Columbia River emerging commercial fishery—Issuance of an emerging commercial fishery license and experimental fishery permit—License and permit conditions.** (1) To maintain consistency in this fishery enabling the department to gather the best available information, a fisher selected by lottery (~~in the initial year the fishery is offered will be able to renew their~~) will be able to obtain a permit for the duration of the fishery.

(2) Applications for participation in the (~~one-time~~) lottery are due by (~~April 30th~~) October 15th of the (~~initial~~) year (~~in which the fishery is offered~~) preceding the fishery starting with October 15, 2023, (for the fishery starting in 2024). Any permits remaining available or that become available will be part of the subsequent year's lottery subject to all of the same conditions of the original lottery taking place in 2023.

(a) Only one application per person is allowed, and only one alternative gear type may be permitted per person for this emerging commercial fishery. Selected fishers wishing to switch between alternative gear types (e.g., purse seine to beach seine) may do so with written approval from the WDFW staff and said switch may only occur between fishing seasons.

(b) (~~The alternative gear an applicant is interested in fishing is in the applicant's possession by the time their application is submitted.~~) The proof of purchase for the alternative gear an applicant is interested in fishing must be submitted to WDFW by April 30th in the inaugural year of the fishery. If such proof of purchase is not submitted by the above date, the department will notify that fisher of their failure and select a new fisher to replace them in the fishery.

(3) Issuance of the annual emerging commercial fishery license and experimental fishery permit will occur by (~~May 30th~~) November 15th of the year and prior to the start of each fishing season.

(a) If the total number of available permits is not filled from the applications received by the deadline for that year, the department may ask for additional applications. If more applications are submitted than the number of permits available for that year, the WDFW will select and notify additional fishers to serve as alternates in the event a selected applicant is no longer able to participate or fails to present the proper proof of purchase for alternate gear.

(b) Applicants selected must respond within 10 business days of being notified by (~~the department~~) WDFW to accept the permit and purchase the emerging fishery license. If the applicant fails to purchase the license and permit within 10 business days of notification of selection, (~~the department~~) WDFW may issue the license and permit to another applicant.

(4) The conditions of possessing a valid license and permit are as follows:

(a) Fishery participants are not precluded from participation in other commercial fisheries.

(b) Fishery participants are required to have a state observer observing their catch while actively fishing.

(c) (~~If a permit holder fails to make multiple landings during the fishery, the experimental permit issued to that fisher will be voided, that person will have his or her name permanently withdrawn~~)

~~from the applicant pool, and a new applicant will be selected from the applicant pool.))~~ Fishery participants are required to actively fish all of the open periods during any season of the fishery.

(d) This license and permit are not transferable between persons. The license and permit holder must be present and in possession of a valid license and permit during fishing operations. (~~(A violation of this subsection is punishable under RCW 77.15.540 Unlawful use of a commercial fishery license—Penalty.)~~)

(e) It is unlawful to violate the conditions of the emerging commercial fishery license and experimental fishery permit. A violation of this subsection is punishable under RCW 77.15.540 Unlawful use of a commercial fishery license—Penalty.

(f) This license and permit may be revoked, at any time, at the discretion of the director (~~and~~). Future licenses and permits denied for failure to comply with conditions specified in the permit or violations of other commercial fishing regulations.