



PROPOSED RULE MAKING

CR-102 (June 2004)

(Implements RCW 34.05.320)

Do NOT use for expedited rule making

Agency: Washington Department of Fish and Wildlife

- Preproposal Statement of Inquiry was filed as WSR 09-03-034 on 1-12-09; or
- Expedited Rule Making--Proposed notice was filed as WSR _____; or
- Proposal is exempt under RCW 34.05.310(4).

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

Title of rule and other identifying information: (Describe Subject) : WAC 220-36-023 and WAC 220-40-027, Rules for commercial salmon fishing in Grays Harbor and Willapa Bay.

Hearing location(s): Natural Resources Building, Room 682, 1111 Washington St., SE, Olympia, WA 98504

Date: Friday, June 5, 2009 Time: 1:30 PM - 2:30 PM

Date of intended adoption: June 19, 2009
(Note: This is NOT the effective date)

Submit written comments to:

Name: Rules Coordinator

Address: WDFW Enforcement, 600 Capitol Way No., Olympia, WA 98501-1091

e-mail: Lori.preuss@dfw.wa.gov

fax (360) 902-2155 by May 22, 2009

Assistance for persons with disabilities: Contact

Susan Yeager by May 22, 2009

TTY (360) 902-2207 or (360) 902-2267

Purpose of the proposal and its anticipated effects, including any changes in existing rules: These rules incorporate the recommendations of the North of Falcon sub-group of the Pacific Fisheries Management Council to take harvestable salmon while protecting species of fish listed as endangered.

Reasons supporting proposal: To protect species of fish listed as endangered while supporting commercial salmon fishing.

Statutory authority for adoption: RCW 77.12.047 and RCW 77.04.020

Statute being implemented: RCW 77.12.047 and RCW 77.04.020

Is rule necessary because of a:

- Federal Law? Yes No
 - Federal Court Decision? Yes No
 - State Court Decision? Yes No
- If yes, CITATION:

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: April 22, 2009

TIME: 9:34 AM

WSR 09-09-125

DATE
April 22, 2009

NAME (type or print)
Lori Preuss

SIGNATURE

TITLE
Rules Coordinator

(COMPLETE REVERSE SIDE)

Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters:

None.

Name of proponent: (person or organization) Washington Department of Fish and Wildlife

- Private
- Public
- Governmental

Name of agency personnel responsible for:

Name	Office Location	Phone
Drafting..... Barbara McClellan	48 Devonshire Rd., Montesano, WA 98563	(360) 249-4628
Implementation.... Jim Scott	1111 Washington Street, Olympia	(360) 902-2651
Enforcement..... Bruce Bjork	1111 Washington Street, SE, Olympia, WA 98504	(360) 902-2373

Has a small business economic impact statement been prepared under chapter 19.85 RCW?

Yes. Attach copy of small business economic impact statement.

A copy of the statement may be obtained by contacting:

Name: Lori Preuss

Address: WDFW Enforcement, 600 Capitol Way No., Olympia, WA 98501-1091

phone (360) 902-2930

fax (360)902-2155

e-mail Lori.preuss@dfw.wa.gov

No. Explain why no statement was prepared.

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 () _____

e-mail _____

No: Please explain: These proposals do not affect hydraulics.

AMENDATORY SECTION (Amending Order 08-166, filed 7/3/08, effective 8/3/08)

WAC 220-40-027 Salmon--Willapa Bay fall fishery. August 16 through December 31 of each year, it is unlawful to fish for salmon in Willapa Bay for commercial purposes or to possess salmon taken from those waters for commercial purposes, except that:

Fishing periods

(1) Gill net gear may be used to fish for salmon and sturgeon as shown below. All nonlegal sturgeon and nonlegal steelhead must be handled with care to minimize injury to the fish and must be released immediately to the river/bay:

Time:	Area:
6:00 p.m. September 15 through 6:00 p.m. September ((17, 2008)) <u>19, 2009.</u>	Areas 2G east of a line projected true south from the most waterward exposed end of the rock jetty located near Washaway Beach, 2H west of Willapa Channel Marker 40, 2J north of a true east-west line drawn through the North Entrance Marker to the Nahcotta Boat Basin (RF #2), and 2M.
6:00 p.m. September ((21)) <u>22</u> through 6:00 p.m. September ((22, 2008)) <u>23, 2009;</u> AND 6:00 p.m. September 28 through 6:00 p.m. September 29, ((2008)) <u>2009.</u>	Area 2K
6:00 p.m. September ((21)) <u>22</u> through 6:00 p.m. ((September 26, 2008. AND 6:00 p.m. September 28 through 6:00 p.m.)) October ((5, 2008)) <u>7, 2009.</u>	Areas 2G east of a line projected true south from the most waterward exposed end of the rock jetty located near Washaway Beach, 2H, 2J north of a true east-west line drawn through the North Entrance Marker to the Nahcotta Boat Basin (RF #2), and 2M.

<p>Time:</p> <p>6:00 p.m. October ((7)) <u>10</u> through 6:00 p.m. October ((10, 2008); AND 6:00 p.m. October <u>12</u> through 6:00 p.m. October 14, 2008) <u>14, 2009</u>.</p> <p>((Noon,)) <u>6:00 p.m.</u> November ((6)) <u>10</u>, through 6:00 p.m. November ((14, 2008)) <u>19</u>, <u>2009</u>.</p> <p>((6:00 p.m.)) <u>Noon</u>, November ((14, 2008)) <u>6</u>, <u>2009</u>, through noon, November 30, ((2008)) <u>2009</u>.</p>	<p>Area:</p> <p>Areas 2G east of a line projected true south from the most waterward exposed end of the rock jetty located near Washaway Beach, 2H, 2J north of a true east-west line drawn through the North Entrance Marker to the Nahcotta Boat Basin (RF #2), and 2M.</p> <p>Areas 2G east of a line projected true south from the most waterward exposed end of the rock jetty located near Washaway Beach, 2H west of the Willapa Channel Marker 40, 2J north of a true east-west line drawn through the North Entrance Marker to the Nahcotta Boat Basin (RF #2), and 2M.</p> <p>Areas 2G, 2H, 2J, and 2M.</p>
---	---

(2) The Tokeland Boat basin is closed to commercial fishing during the openings in Salmon Management and Catch Reporting Area (SMCRA) 2G, described in this section. The Tokeland Boat basin is that portion of SMCRA 2G bounded on the south by the shoreline of the boat basin, on the west by the seawall, and on the north and east by a line from the Tokeland Channel Marker "3" (flashing green, 4-seconds), to Tokeland Channel Marker "4," to the tip of the seawall.

Gear

- (3) Gill net gear restrictions - All areas:
 - (a) Drift gill net gear only. It is unlawful to use set net gear.
 - (b) September 1 through ((October 5, 2008)) September 21, 2009: Six-inch maximum mesh, and net may be no more than fifty-five meshes deep. Net must hang straight from top to bottom. Strings may only be used to secure ((break-away)) breakaway panels.
 - (c) ((October 7)) September 22 through October 31, ((2008)) 2009: Six and one-half inch maximum mesh.
 - (d) November 6 through November 30, ((2008)) 2009: Nine-inch minimum mesh; except from 6:00 p.m. November 10 through 6:00 p.m. November ((14, 2008)) 19, 2009 (coho directed), there are two alternatives:
 - (i) Use six-inch maximum mesh; and net may be no more than

fifty-five meshes deep. Net must hang straight from top to bottom. Strings may only be used to secure break-away panels; or

(ii) Use nine-inch minimum mesh.

(iii) Only one net of either six-inch or nine-inch configuration, not exceeding fifteen hundred feet, may be (~~on board the vessel~~) used when in the act of fishing.

Other

(4) Quick reporting is required for wholesale dealers and fishers retailing their catch under a "direct retail endorsement." According to WAC 220-69-240(12), reports must be made by 10:00 a.m. the day following landing.

(5) NOAA Fisheries has listed the southern population of green sturgeon as threatened under the Endangered Species Act, effective July 6, 2006. Most of the green sturgeon taken in Washington fisheries are from the southern population. Therefore, the retention of green sturgeon is prohibited(~~(7)~~); to protect this federally listed stock.

AMENDATORY SECTION (Amending Order 08-166, filed 7/3/08, effective 8/3/08)

WAC 220-36-023 Salmon--Grays Harbor fall fishery. August 16 through December 31 of each year, it is unlawful to fish for salmon in Grays Harbor for commercial purposes or to possess salmon taken from those waters for commercial purposes, except that:

Fishing periods

(1) Gill net gear may be used to fish for salmon and sturgeon according to the chart below. All nonlegal sturgeon and nonlegal steelhead must be handled with care to minimize injury and must be released immediately to the river/bay:

Time:	Areas:
6:00 p.m. (October 11) <u>September 3</u> through 6:00 p.m. (October 12, 2008) <u>September 4, 2009</u> ; (AND)	Area 2C
6:00 p.m. (October 15) <u>September 8</u> through 6:00 p.m. (October 16, 2008 ;	
7:00 a.m. October 8 through 7:00 p.m. October 8, 2008; 7:00 a.m. October 9 through 7:00 p.m. October 9, 2008; 7:00 a.m. October 10 through 7:00 p.m. October 10, 2008.)) <u>September 9,</u> <u>2009</u> ;	((That portion of Area 2A upstream from the Highway 101 Bridge at Aberdeen, to a line projected from the Lakeside Industries asphalt plant tower at a right angle to the thread of the stream to the opposite shore: AND
<u>6:00 a.m. September 13</u> <u>through 6:00 p.m.</u> <u>September 14, 2009</u> ;	That portion of Area 2D lying easterly of a north- south line from the confluence of the Hoquiam and Chehalis rivers to Renney Island, then easterly to Range Marker G, then to the eastern boundary of Area 2D at the Highway 101 Bridge.))
AND <u>6:00 p.m. September 29</u> <u>through 6:00 p.m.</u> <u>September 30, 2009.</u>	

Gear

(2) Gill net gear restrictions: All areas:
(a) Drift gill net gear only. It is unlawful to use set net gear.

~~(b) ((6-inch maximum mesh restriction, and nets may be no more than 55 meshes deep.~~

~~(c))~~ Nine-inch maximum mesh size allowed.

(c) Nets must be single mesh size.

(d) Soak time must not exceed 45 minutes. Soak time is defined as the time elapsed from when the first of the gill net web is deployed into the water until the gill net web is fully retrieved from the water.

~~((d))~~ (e) Each boat must have two operable recovery boxes or one box with two chambers on board when fishing Area ~~((2A/2D on October 8, 9, and 10, 2008))~~ 2C. Each box must be operating during any time the net is being retrieved or picked. The flow in the recovery box must be a minimum of 16 gallons per minute in each chamber of the box, not to exceed 20 gallons per minute. Each chamber of the recovery box must meet the following dimensions as measured from within the box: The inside length measurement must be at or within 39 1/2 inches to 48 inches, the inside width measurements must be at or within 8 to 10 inches, and the inside height measurement must be at or within 14 to 16 inches.

Each chamber of the recovery box must include a water inlet hole between 3/4 inch and 1 inch in diameter, centered horizontally across the door or wall of the chamber and 1 3/4 inches from the floor of the chamber. Each chamber of the recovery box must include a water outlet hole opposite the inflow that is at least 1 1/2 inches in diameter. The center of the outlet hole must be located a minimum of 12 inches above the floor of the box or chamber. The fisher must demonstrate to department employees, fish and wildlife enforcement officers, or other peace officers, upon request, that the pumping system is delivering the proper volume of fresh river/bay water into each chamber.

(e) All ~~((Chinook))~~ wild coho, nonlegal sturgeon, and steelhead must be handled with care to minimize injury to the fish and must be released immediately to the river/bay or to an operating recovery box.

(f) Any fish that is bleeding or lethargic must be placed in the recovery box prior to being released to the river/bay.

(g) All fish placed in recovery boxes must be released to the river/bay prior to landing or docking.

Other

(3) Quick reporting is required for wholesale dealers and fishers retailing their catch under a "direct retail endorsement." According to WAC 220-69-240(12), reports must be made by 10:00 a.m. the day following landing.

(4) Fishers must take department observers if requested by department staff when participating in these openings. Pursuant to WAC 220-69-240, fishers also must provide notice of intent to participate by contacting quick reporting by phone, fax or e-mail. Notice of intent must be given prior to ~~((10:00 a.m.))~~ 5:00 p.m. on ~~((October 6))~~ August 28, 2009, for the ~~((October 8-10))~~ openings in Area ~~((s-2A/2D))~~ 2C.

(5) NOAA Fisheries has listed the southern population of green

sturgeon as threatened under the Endangered Species Act, effective July 6, 2006. Most of the green sturgeon taken in Washington fisheries are from the southern population. Therefore, the retention of green sturgeon is prohibited((7)); to protect this federally listed stock.