

WSR 22-13-153
PROPOSED RULES
DEPARTMENT OF
FISH AND WILDLIFE

[Order 21-07—Filed June 21, 2022, 11:30 a.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 21-11-094 on May 19, 2021.

Title of Rule and Other Identifying Information: Designating an emerging commercial fishery in the Lower Columbia River for the use of alternative commercial fishing gears, including purse seines, beach seines, and pound nets. This fishery will also require a fisher possess an experimental fishing permit prior to the start of the fishery.

Hearing Location(s): On August 3, 2022, at 1:00 - 2:30 p.m. In-person at Washington Department of Fish and Wildlife (WDFW) Region 5, Ridgefield Office, 5525 South 11th Street, Ridgefield, WA 98642; and virtually. Zoom meeting <https://us02web.zoom.us/j/81450146884?pwd=bUJ6aTcxa2JDaG1CcZhZd0J4dm9GUT09>.

Date of Intended Adoption: November 1, 2022.

Submit Written Comments to: Charlene Hurst, 5525 South 11th Street, Ridgefield, WA 98642, email ColumbiaRiverCommercial102@PublicInput.com, voicemail message 885-925-2801, project code 4006, website <https://publicinput.com/ColumbiaRiverCommercial102>, by August 3, 2022.

Assistance for Persons with Disabilities: Contact civil rights compliance coordinator, phone 360-902-2349, TTY 1-800-833-6388 or 711, email Title6@dfw.wa.gov, <https://wdfw.wa.gov/accessibility/requests-accommodation>, by August 3, 2022.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this rule is to allow for alternative commercial fishing gears to be used for commercial fishing in the Lower Columbia River using an emerging commercial fishery license and an associated experimental gear permit. This fishery will be limited entry with participants chosen from a one-time lottery in the first year the fishery is offered. The anticipated effects are that some commercial fishers may use these gears to harvest salmon when fisheries are open for commercial harvest using the existing commercial allocation as described in Policy C-3630 for the Columbia River.

Reasons Supporting Proposal: This rule designates an emerging nontreaty commercial fishery in the Lower Columbia River to gather information and data on the use of other commercial fishing gears such as seines and pound nets. This limited entry fishery is established consistent with RCW 77.70.160 and is implemented based on Policy C-3630, which includes guiding principles and actions to improve the management of salmon in the Columbia River basin. This designation is the next step in gathering information on how these gears perform in a commercial fishery, as opposed to a test fishery or in a research capacity and is a necessary step to providing the Washington legislature the information they need to decide whether to legalize these gears (per RCW 77.70.180).

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: WAC 220-360-500 Designation of an emerging commercial fishery in the Lower Columbia River, 220-360-510 Columbia River emerging commercial fishery—Qualifications,

220-360-520 Columbia River emerging commercial fishery—Issuance of an emerging commercial fishery license and experimental fishery permit—License and permit conditions, 220-360-530 Columbia River seine emerging commercial fishery—Season, area, and gear requirements, and 22-360-540 Columbia River emerging commercial fishery—Allowable possession and sales—Catch handling requirements.

Rule is not necessitated by federal law, federal or state court decision.

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.

Name of Proponent: WDFW, governmental.

Name of Agency Personnel Responsible for Drafting: Charlene Hurst, Ridgefield, Washington, 360-605-0536; Implementation: Ryan Lof-trop, Olympia, Washington, 360-902-2808; and Enforcement: Captain Jeff Wickersham, Ridgefield, Washington, 360-906-6714; Captain Dan Chad-wick, Montesano, Washington, 360-249-4628 ext. 252.

A school district fiscal impact statement is not required under RCW 28A.305.135.

A cost-benefit analysis is not required under RCW 34.05.328. This rule proposal does not require a cost-benefit analysis per RCW 34-05-328 (5) (a) (i).

This rule proposal, or portions of the proposal, is exempt from requirements of the Regulatory Fairness Act because 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.

June 21, 2022
Annie Szvetcz
Rules Coordinator

OTS-3888.1

NEW SECTION

WAC 220-360-500 Designation of an emerging commercial fishery in the Lower Columbia River. (1) The director designates an emerging commercial fishery in the Lower Columbia River. The director has determined a need to limit the number of participants in this fishery.

(2) It is unlawful to fish for, possess, or deliver salmon taken for this fishery unless the fisher possesses a valid emerging commercial fishery license and experimental fishery permit. A violation of this subsection is punishable under RCW 77.15.500 Commercial fishing without a license—Penalty.

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NEW SECTION**WAC 220-360-510 Columbia River emerging commercial fishery—**

Qualifications. To qualify for an emerging commercial fishery license and experimental fishery permit, a person must:

- (1) Possess a commercial gillnet salmon license/permit issued by Washington (WA) or Oregon (OR) for the Columbia River; and
 - (a) Demonstrate by valid Washington or Oregon fish receiving tickets that salmon have been taken in the Columbia River or Columbia River select areas within the most recent five calendar years under that license or by the applicant under a commercial salmon license issued for the Columbia River; or
 - (b) Demonstrate participation in a test fishery (WA) or possession and use of an experimental gear permit (OR) using alternative commercial fishing gears within the most recent five calendar years.
- (2) Have at least three years of commercial salmon fishing experience.
- (3) Have at least one year of fishing experience (commercially or in a research/test fishery capacity) with purse seines, beach seines, or a pound net.
- (4) Be free of a commercial fishing or other related violation within the last 10 years.

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NEW SECTION**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 permit for the duration of the fishery.
- (2) Applications for participation in the one-time lottery are due by March 15th of the initial year in which the fishery is offered.
 - (a) Only one application per person is allowed, and only one gear type may be permitted per person.
 - (b) The alternative gear an applicant is interested in fishing is in the applicant's possession by the time their application is submitted.
- (3) Issuance of the annual emerging commercial fishery license and experimental fishery permit will occur by May 15th 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, the department may ask for additional applications.
 - (b) Applicants selected must respond within 10 business days of being notified by the department 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 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.
- (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 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.

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NEW SECTION

WAC 220-360-530 Columbia River emerging commercial fishery—Season, area, and gear requirements. (1) The following gear is allowable:

- (a) Purse seines as defined in WAC 220-350-110.
- (b) Beach seines as defined in WAC 220-350-040.
- (c) Pound nets as defined here as nets attached to fixed pilings, stakes, and/or anchors to form a lead, guiding fish into at least one heart, pot, or spiller that directs fish into a live well for sorting.
- (2) Other gears may be considered for inclusion in this fishery if:
- (a) The gear has a TAC approved mortality rate; and
- (b) It is brought forward by a commercial fisher possessing a Columbia River commercial fishing license.
- (3) All other season, area, and gear requirements will be as determined by the states of Oregon and Washington via the Columbia River compact process.

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NEW SECTION

WAC 220-360-540 Columbia River emerging commercial fishery—Allowable possession and sales—Catch handling requirements. (1) Allowable possession and sales: Salmon, and as determined by the states of Oregon and Washington via the Columbia River compact process. All spe-

cies other than salmon must be carefully handled and promptly returned to the water.

(2) Handling of catch: Salmon catch may only be handled by hand or with rubber coated nets when sorting fish. Fish must be sorted while submerged in the water; it is unlawful to dry sort fish on land or on deck.

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