

**WSR 23-15-096
PROPOSED RULES
DEPARTMENT OF
FISH AND WILDLIFE**

[Order 23-12—Filed July 18, 2023, 1:11 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 23-11-100 on May 19, 2023.

Title of Rule and Other Identifying Information: Revising the WAC for the emerging commercial fishery in the lower Columbia River.

Hearing Location(s): On August 22, 2023, at 1:00 - 2:30 p.m., at Washington Department of Fish and Wildlife (WDFW), Region 5 Ridgefield Office, 5525 South 11th Street, Ridgefield, WA 98642; and virtually https://us02web.zoom.us/webinar/register/WN_-D_9Qg-IRz-dVH_QQJuhvA.

Date of Intended Adoption: On or after August 23, 2023.

Submit Written Comments to: Kelly Henderson, P.O. Box 43200, Olympia, WA 98504, email emerging-commercial-fisheries@PublicInput.com, website <https://publicinput.com/emerging-commercial-fisheries>, voicemail comments 855-925-2801, project code 5016, by August 22, 2023.

Assistance for Persons with Disabilities: Contact VI/ADA compliance coordinator, phone 360-902-2349, TTY 711, email Title6@dfw.wa.gov, <https://wdfw.wa.gov/accessibility/requestsaccommodation>, by 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 WDFW provide 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.

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

Lothrop, Olympia, Washington, 360-902-2808; and Enforcement: Captain Jeff Wickersham, Ridgefield and Montesano, Washington, 360-696-6211.

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. Under RCW 34.05.328(5), a cost-benefit analysis is not required for this rule as WDFW is not implementing RCW 77.55 with this rule.

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

Is exempt under RCW 19.85.025(4).

Scope of exemption for rule proposal:

Is fully exempt.

July 18, 2023

Scott Bird

Rules Coordinator

OTS-4716.1

AMENDATORY SECTION (Amending WSR 22-23-006, filed 11/2/22, effective 12/3/22)

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.

[Statutory Authority: RCW 77.04.012, 77.04.020, 77.04.130, 77.12.045, 77.12.047, 77.70.160, 77.50.030, and 77.65.400. WSR 22-23-006 (Order 22-262), § 220-360-520, filed 11/2/22, effective 12/3/22.]