

WSR 22-21-099  
PROPOSED RULES  
DEPARTMENT OF  
FISH AND WILDLIFE

[Order 22-14—Filed October 17, 2022, 2:48 p.m.]

Original Notice.

Preproposal statement of inquiry was filed as WSR 22-16-099 on August 2, 2022.

Title of Rule and Other Identifying Information: The department is considering amendments to commercial Eulachon fishing rules, WAC 220-358-060 Smelt.

Hearing Location(s): On January 26-28, 2023, at 8:00 a.m., join the webinar <https://us06web.zoom.us/j/88262111264>, Webinar ID 882 6211 1264. Briefing/public hearing.

Date of Intended Adoption: No sooner than February 1, 2023.

Submit Written Comments to: Kelly Henderson, email [EulachonFishing@PublicInput.com](mailto:EulachonFishing@PublicInput.com), website <https://publicinput.com/EulachonFishing>, voicemail comments 855-925-2801, project code 4237, by January 28, 2023.

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](mailto:Title6@dfw.wa.gov), <https://wdfw.wa.gov/accessibility/requests-accomodation>, by January 28, 2023.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: The purpose of this rule is to rescind open fishing periods from the permanent Eulachon commercial fishing regulations to align these fishing regulations with current management strategies. There is no anticipated effect to commercial fishers since this fishery has not operated according to the open periods listed in permanent rules since 2010.

Reasons Supporting Proposal: Eulachon fisheries are managed in accordance with NOAA Fisheries due to their Endangered Species Act (ESA) listing status. Therefore, this rule would allow managers to set sustainable harvest limits by modifying fishery duration and intensity on an annual basis, pending run size forecasts. This rule change and management strategy will be in alignment with the revised Eulachon Management Plan in progress.

Statutory Authority for Adoption: RCW 77.04.012, 77.04.020, 77.04.130, 77.12.045, 77.12.047.

Statute Being Implemented: RCW 77.04.012, 77.04.130, 77.12.045, 77.12.047.

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 Eulachon commercial fishery will be decided annually based on Eulachon run sizes, availability of impacts to listed species under ESA and as part of the Columbia River compact process.

Name of Proponent: Washington department of fish and wildlife, governmental.

Name of Agency Personnel Responsible for Drafting and Implementation: Laura Heironimus, Ridgefield, Washington, 360-719-0677; Enforcement: Captain Jeff Wickersham, Ridgefield, Washington or Montesano, Washington, 360-906-6714 or 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. Not required under RCW 34.05.328 (5) (a) (iii).

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).

Explanation of exemptions: This rule conforms permanent rules with over a decade of fishery management decisions for the Eulachon commercial fishery, as managed under the Columbia River compact process.

Scope of exemption for rule proposal:

Is fully exempt.

October 17, 2022  
Chris Fredley  
for Annie Szvetecz  
Rules Analyst

## OTS-4143.1

AMENDATORY SECTION (Amending WSR 17-05-112, filed 2/15/17, effective 3/18/17)

**WAC 220-358-060 Smelt.** It is unlawful to fish for smelt in the lower Columbia River for commercial purposes or to possess smelt taken from those waters for commercial purposes, except as provided in this section:

### Gear

- (1) Otter trawl gear may be used to fish for smelt if:
  - (a) The head rope of the trawl does not exceed 25 feet in length.
  - (b) The foot rope or groundline of the trawl does not exceed 25 feet in length.
  - (c) The dimensions of the trawl's otter doors do not exceed 3 feet by 4 feet.
  - (d) The bag length of the trawl, as measured from the center of the head rope to the terminal end of the bunt, does not exceed 35 feet.
  - (e) The bridal rope from the rear of the otter doors to the foot and head ropes does not exceed 8 feet.
  - (f) Each breast rope does not exceed 5 feet.
  - (g) The mesh size used in the trawl does not exceed 2 inches stretch measure.
  - (h) Only one trawl net is fished from the boat at a time.
- (2) Gillnet gear may be used to fish for smelt if it does not exceed 1,500 feet in length along the cork line and the mesh size of the net does not exceed 2 inches stretch measure.
- (3) Hand dip net gear may be used to fish for smelt if it does not measure more than 36 inches across the bag frame.
- (4) From December 1 through March 31 it is lawful for smelt fishers to have salmon or sturgeon gillnets aboard while fishing for smelt.

**( (Fishing periods**

~~(5) Otter trawl gear may be used to fish for smelt in SMCRA 1A from 6 p.m. Monday to 6 p.m. Wednesday of each week from March 1 through March 31, and for boats not exceeding 32 feet in length, in SMCRA 1B, 1C, 1D and 1E 7 days per week from December 1 through March 31 of the following year.~~

~~(6) Gillnet gear may be used to fish for smelt in SMCRA 1A, 1B, 1C, 1D and 1E 7 days per week from December 1 of each year through March 31 of the following year.~~

~~(7) Hand dip net gear may be used to fish for smelt in SMCRA 1A, 1B, 1C, 1D and 1E and tributaries to these areas 7 days per week from December 1 of each year through March 31 of the following year.~~

~~(8) The following areas of the lower Columbia River remain closed to smelt fishing during the open time periods specified in this section:~~

~~(a) Those waters within one mile of a dam or other obstruction.~~

~~(b) Those waters of the Cowlitz River upstream from a monument located at Peterson's Eddy, also known as Miller's Eddy.)~~

[Statutory Authority: RCW 77.04.012, 77.04.013, 77.04.020, 77.04.055, and 77.12.047. WSR 17-05-112 (Order 17-04), recodified as § 220-358-060, filed 2/15/17, effective 3/18/17. Statutory Authority: RCW 77.12.047. WSR 00-17-117 (Order 00-146), § 220-33-040, filed 8/17/00, effective 9/17/00. Statutory Authority: RCW 75.08.080. WSR 88-18-066 (Order 88-86), § 220-33-040, filed 9/2/88.]