



RULE-MAKING ORDER

CR-103P (May 2009)
(Implements RCW 34.05.360)

Agency: Washington Department of Fish and Wildlife

Permanent Rule Only

Effective date of rule:

Permanent Rules 14-157

31 days after filing.

Other (specify) _____ (If less than 31 days after filing, a specific finding under RCW 34.05.380(3) is required and should be stated below)

Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?

Yes No If Yes, explain:

Purpose: This rule proposal makes changes to the Puget Sound commercial and recreational smelt rules. The proposal closes Sundays to commercial fishing, enacts a 60,000-lb annual harvest quota on the commercial fishery, closes currently inactive commercial fishery gear types, and imposes a nighttime closure (10PM-6AM) on the commercial and recreational fisheries during open periods.

Reasons supporting proposal: This rule change proposal was discussed during the Fish and Wildlife Commission meeting and public hearing on April 12, 2014. The proposed changes were adopted by the Commission at the June 13, 2014, Commission meeting. The changes will provide additional protection from harvest to smelt throughout Puget Sound, preserving this natural resource for use by other components of the ecosystem.

Citation of existing rules affected by this order:

Repealed:

Amended: WAC 220-49-005, 220-49-011, 220-49-012, 220-49-013, 220-49-056, 220-49-057, 220-56-107, and 220-56-270

Suspended:

Statutory authority for adoption: RCW 77.04.012, 77.04.013, 77.12.045, and 77.12.047.

Other authority :

PERMANENT RULE (Including Expedited Rule Making)

Adopted under notice filed as WSR 14-06-110 on March 5, 2014.

Describe any changes other than editing from proposed to adopted version:

The Commission chose Option 2 as the preferred Option, so Option 3 as filed in WSR 14-06-110 was not adopted and is therefore not part of this CR-103 filing. The proposed version did not include an explicit commercial harvest quota of 60,000 lbs. This quota was added by the Commission prior to adopting the changes and ensures harvest levels will remain consistent with conservative Commission policy recommendations in the future.

If a preliminary cost-benefit analysis was prepared under RCW 34.05.328, a final cost-benefit analysis is available by contacting:

Name: _____ phone () _____
Address: _____ fax () _____
e-mail _____

Date adopted: June 13, 2014

NAME (TYPE OR PRINT)

Miranda Wecker

SIGNATURE

Miranda Wecker

TITLE

Chair, Washington Fish and Wildlife Commission

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: July 02, 2014

TIME: 3:26 PM

WSR 14-15-006

(COMPLETE REVERSE SIDE)

**Note: If any category is left blank, it will be calculated as zero.
No descriptive text.**

**Count by whole WAC sections only, from the WAC number through the history note.
A section may be counted in more than one category.**

The number of sections adopted in order to comply with:

Federal statute:	New	_____	Amended	_____	Repealed	_____
Federal rules or standards:	New	_____	Amended	_____	Repealed	_____
Recently enacted state statutes:	New	_____	Amended	_____	Repealed	_____

The number of sections adopted at the request of a nongovernmental entity:

New	_____	Amended	_____	Repealed	_____
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The number of sections adopted in the agency's own initiative:

New	_____	Amended	<u>8</u>	Repealed	_____
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The number of sections adopted in order to clarify, streamline, or reform agency procedures:

New	_____	Amended	_____	Repealed	_____
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The number of sections adopted using:

Negotiated rule making:	New	_____	Amended	_____	Repealed	_____
Pilot rule making:	New	_____	Amended	_____	Repealed	_____
Other alternative rule making:	New	_____	Amended	_____	Repealed	_____

AMENDATORY SECTION (Amending WSR 98-05-043, filed 2/11/98, effective 3/14/98)

WAC 220-49-005 Puget Sound forage fish(~~(-Definitions)) commercial fisheries-General provisions.~~ (1) It is unlawful to fish for or possess Puget Sound forage fish taken for commercial purposes except at the times, during the seasons and using the gear provided for in this chapter.

(2) It is unlawful to fish for or possess candlefish taken for commercial purposes. A violation of this subsection is punishable under RCW 77.15.550, Violation of commercial fishing area or time-Penalty.

(3) The total annual quota for the Puget Sound smelt commercial fishery may not exceed sixty thousand pounds.

AMENDATORY SECTION (Amending WSR 98-05-043, filed 2/11/98, effective 3/14/98)

WAC 220-49-011 Puget Sound herring, anchovy and smelt (~~(fishing-Lawful-gear)) commercial fisheries-Drag seine.~~ (1) (~~(Lawful)~~) Gear requirements: It is unlawful to operate drag seine gear in the Puget Sound herring, anchovy and smelt commercial fisheries (~~(shall-not)~~) that exceeds 350 feet in length or contains meshes less than 1/2 inch stretch measure. A violation of this subsection is punishable under RCW 77.15.520, Commercial fishing-Unlawful gear or methods-Penalty.

(2) Licensing:

(a) A food fish drag seine fishery license is (~~(a-license)~~) required to operate (~~(the)~~) drag seine gear (~~(provided for in this section)~~) in the Puget Sound smelt and anchovy commercial fisheries and allows the operator to retain smelt and anchovy.

(b) A herring drag seine fishery license is (~~(a-license)~~) required to operate (~~(the)~~) drag seine gear (~~(provided for in this section)~~) in the Puget Sound herring commercial fishery and allows the operator to retain herring.

(c) Failure to obtain the required license prior to operating gear and retaining smelt, anchovy or herring is punishable under RCW 77.15.500, Commercial fishing without a license-Penalty.

AMENDATORY SECTION (Amending WSR 98-05-043, filed 2/11/98, effective 3/14/98)

WAC 220-49-012 Puget Sound herring(~~(7)) and anchovy (~~(and-smelt fishing)) commercial fisheries-Purse seine.~~~~ (1) (~~(Lawful)~~) Gear requirements:

(a) It is unlawful to harvest smelt using purse seine gear in Puget Sound.

(b) It is unlawful to operate purse seine gear in the Puget Sound herring and anchovy fisheries (~~(shall-not)~~) that exceeds 600 feet in length or contains meshes less than 1/2-inch stretch measure, unless otherwise authorized by permit from the director.

(2) (~~Lawful purse seine gear in the Puget Sound smelt fishery shall not exceed 350 feet in length nor contain meshes less than 1/2 inch stretch measure.~~) A violation of subsection (1) of this section is punishable under RCW 77.15.520, Commercial fishing-Unlawful gear or methods-Penalty.

(3) Licensing:

(a) A baitfish purse seine fishery license is (~~a license~~) required to operate (~~the~~) purse seine gear (~~provided for in this section~~) in the Puget Sound anchovy commercial fishery and allows the operator to retain (~~smelt and~~) anchovy.

(b) A herring purse seine fishery license is (~~a license~~) required to operate (~~the~~) purse seine gear (~~provided for in this section~~) in the Puget Sound herring fishery and allows the operator to retain herring.

(c) Failure to obtain the required license prior to operating purse seine gear and retaining anchovy or herring is punishable under RCW 77.15.500, Commercial fishing without a license-Penalty.

AMENDATORY SECTION (Amending WSR 02-08-026, filed 3/27/02, effective 4/27/02)

WAC 220-49-013 Puget Sound herring(~~7~~) and anchovy (~~and smelt fishing~~) commercial fisheries-Dip bag net. (1) (~~Lawful~~) Gear requirements:

(a) It is unlawful to harvest smelt using dip bag net gear in Puget Sound.

(b) It is unlawful to operate dip bag net gear in the Puget Sound herring and anchovy fisheries (~~shall not~~) that exceeds 18 square feet. (~~Lawful dip bag net gear in the Puget Sound smelt fishery shall not exceed 36 inches across the frame.~~)

(c) It is unlawful to operate a dip net from a vessel under power, and it is unlawful to operate more than one dip net at one time.

(2) A violation of subsection (1) of this section is punishable under RCW 77.15.520, Commercial fishing-Unlawful gear or methods-Penalty.

(3) Licensing:

(a) (~~A smelt~~) An anchovy dip bag net fishery license is (~~a license~~) required to operate (~~the~~) dip bag net gear (~~provided for in this section~~) in the Puget Sound anchovy commercial fishery and allows the operator to retain (~~smelt and~~) anchovy.

(b) A herring dip bag net fishery license is (~~a license~~) required to operate (~~the~~) dip bag net gear (~~provided for in this section~~) in the Puget Sound herring commercial fishery and allows the operator to retain herring.

(c) Failure to obtain the required license prior to operating dip bag net gear and retaining anchovy or herring is punishable under RCW 77.15.500, Commercial fishing without a license-Penalty.

AMENDATORY SECTION (Amending WSR 04-17-098, filed 8/17/04, effective 9/17/04)

WAC 220-49-056 Puget Sound smelt ((fishing)) commercial fishery-Seasons. It ((shall be)) is unlawful to take, fish for or possess smelt for commercial purposes in Puget Sound except during the following seasons:

(1) Areas 20A and 21A((—)): Open July 1 ((~~to~~)) through April 15.

(2) Area 22B((—)): Open November 1 ((~~to~~)) through April 15.

(3) Areas 24A, 24B, 24C, and 24D((—)): Open July 1 ((~~to~~)) through April 15.

(4) Areas 25A and 25E((—)): Open November 1 ((~~to~~)) through April 15.

(5) Areas 26B, 26C, 26D, 28B, and 28C((—)): Open October 1 ((~~to~~)) through April 15, except:

(a) Those waters within 200 feet of the shore adjacent to department property at Ross Point in Area 26C are closed to commercial smelt harvest at all times((~~to~~)); and

(b) Those waters of Sinclair Inlet west of a line due south from the ferry dock in Bremerton are open only ((~~8:01~~)) from 6:01 a.m. Wednesday through ((~~7:59 a.m. Friday~~)) 9:59 p.m. Thursday of each week during the open period.

(6) Areas 27A, 27B and 27C((—)): Closed year-round.

(7) Areas 28A and 28D((—)): Open September 1 ((~~to~~)) through April 15.

(8) All other areas not specified in this section are open ((the entire year)) year-round.

(9) A violation of this section is punishable under RCW 77.15.550, Violation of commercial fishing area or time-Penalty.

AMENDATORY SECTION (Amending WSR 94-12-009, filed 5/19/94, effective 6/19/94)

WAC 220-49-057 Puget Sound smelt ((fishing)) commercial fishery-Weekly periods. It is unlawful to fish for smelt for commercial purposes in Puget Sound except from ((~~8:00 a.m. Sunday to 8:00 a.m. Friday and~~)) 6:00 a.m. to 10:00 p.m. each day Monday through Thursday during open seasons. It is unlawful to possess smelt taken for commercial purposes during ((such)) a closed ((period)) time. A violation of this section is punishable under RCW 77.15.550, Violation of commercial fishing area or time-Penalty.

AMENDATORY SECTION (Amending WSR 06-13-023, filed 6/13/06, effective 7/14/06)

WAC 220-56-107 Fishing hours. (1) It is (~~lawful~~) permissible to fish for food fish, game fish, and unclassified fish twenty-four hours per day during any open period for the species, except as otherwise provided. Unless otherwise provided, fishing seasons open at 12:01 a.m. on the first day and end at 11:59 p.m. on the last day of any season.

(2) It is unlawful to fish for the following species during the (~~time periods indicated~~) following times and within the following areas:

(a) It is unlawful to fish for salmon at night in the Hoodspout Hatchery zone as provided (~~for~~) in WAC 220-56-124.

(b) It is unlawful to fish for any species during night closures as provided (~~for in WAC 220-56-126 and 232-28-619~~) in department rule.

(c) It is unlawful to fish for sturgeon in freshwater, except the Chehalis River, during the night closure provided (~~for~~) in WAC 220-56-282 (6)(k).

(d) It is unlawful to fish for smelt in Puget Sound from 10:00 p.m. to 6:00 a.m. unless the person fishes for smelt using forage fish jig gear.

AMENDATORY SECTION (Amending WSR 11-16-103, filed 8/3/11, effective 9/3/11)

WAC 220-56-270 Smelt—Areas and seasons. (1) It is unlawful to fish for or possess Columbia River smelt or eulachon (*Thaleichthys pacificus*).

(2) Fishing for smelt other than Columbia River smelt or eulachon (*Thaleichthys pacificus*) is (~~permitted the entire year~~) permissible year-round on Pacific Ocean beaches and in all rivers concurrent with a salmon or gamefish opening, except (~~closed~~) it is unlawful to fish for smelt in the Columbia River and its tributaries.

(3) Fishing for smelt other than Columbia River smelt or eulachon (*Thaleichthys pacificus*) is open in Puget Sound and the Strait of Juan de Fuca (~~the entire year~~) year-round except:

(a) Closed weekly from (~~8:00 a.m. Wednesday to 8:00~~) 10:00 p.m. Tuesday to 6:00 a.m. Friday for all (~~types of~~) gear types except forage fish (~~jigger~~) jig gear; and

(b) Closed year-round in Catch Record Card Area 12 for all gear types.

(c) Violation of this subsection is an infraction, punishable under RCW 77.15.160.

(4) It is unlawful to possess smelt taken with gear in violation of the provisions of this section. Possession of smelt while using gear in violation of the provisions of this section is a rebuttable presumption that the smelt were taken with such gear. Possession of such smelt is punishable under RCW 77.15.380. Unlawful recreational fishing in the second degree—Penalty, unless the smelt are taken in (~~the~~) an amount(~~s~~) or manner to constitute a violation of RCW 77.15.370. Unlawful recreational fishing in the first degree—Penalty.