



PROPOSED RULE MAKING

CR-102 (June 2012)

(Implements RCW 34.05.320)

Do NOT use for expedited rule making

Agency: Department of Fish and Wildlife

Preproposal Statement of Inquiry was filed as WSR 14-02-114 on 12/31/2013; or
 Expedited Rule Making--Proposed notice was filed as WSR _____; or
 Proposal is exempt under RCW 34.05.310(4) or 34.05.330(1).

Original Notice
 Supplemental Notice to WSR _____
 Continuance of WSR _____

Title of rule and other identifying information: (Describe Subject)

WAC 220-49-005 Puget Sound forage fish—Definitions—General provisions.
WAC 220-49-011 Herring, anchovy and smelt fishing—Lawful gear—Drag seine
WAC 220-49-012 Herring, anchovy and smelt fishing—Purse seine
WAC 220-49-013 Herring, anchovy and smelt fishing—Dip bag net.
WAC 220-49-056 Smelt fishing—Seasons.
WAC 220-49-057 Smelt fishing—Weekly periods
WAC 220-56-107 Fishing hours.
WAC 220-56-270 Smelt—Areas and seasons.

Hearing location(s):
Natural Resources Building, Room 172
1111 Washington St SE
Olympia WA 98504

Date: April 11-12, 2014 Time: 8:30 a.m.

Date of intended adoption: on or after June 13, 2014
(Note: This is **NOT** the effective date)

Submit written comments to:

Name: Craig Burley
Address: 600 Capitol Way N
Olympia, WA 98501
e-mail Craig.Burley@dfw.wa.gov
fax (360) 902-2943 by April 4, 2014

Assistance for persons with disabilities: Contact

Tami Lininger by April 2, 2014
TTY (360) 902-2207 or (360) 902-2267

Purpose of the proposal and its anticipated effects, including any changes in existing rules:

This proposal addresses smelt harvest in Puget Sound and explores rule changes to reduce recreational and commercial smelt harvest. Three options are proposed: 1) No changes to the rules; 2) Closure of the commercial fishery on Sundays and from 10:00 p.m. to 6:00 a.m. during open seasons, as well as closure of the recreational dip net fishery from 10:00 p.m. to 6:00 a.m.; and 3) Complete closure of the commercial fishery and closure of the recreational dip net fishery from 10:00 p.m. to 6:00 a.m. Additionally, under both options 2 and 3, inactive commercial purse seine and dip bag net fisheries in Puget Sound are permanently closed. Under options 2 and 3, commercial smelt harvest is expected to decrease from 40-100%. Recreational harvest will decrease with the night closure, but the degree of this decrease cannot be predicted as the recreational fishery is not currently monitored. A creel survey at one location in 2012 suggests the night closure could reduce harvest by as much as 11% at one high-use site.

Reasons supporting proposal:

Reducing smelt harvest will leave more forage fish in the water for consumption by other species in marine and terrestrial ecosystems within and adjacent to Puget Sound. In lieu of detailed knowledge about the abundance and distribution of surf smelt, options 2 and 3 represent a precautionary, conservative approach to management.

Statutory authority for adoption: RCW 77.04.012, 77.04.013, 77.04.055, and 77.12.047.

Statute being implemented: RCW 77.04.012, 77.04.013, 77.04.055, and 77.12.047.

Is rule necessary because of a:

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

DATE
March 5, 2014

NAME (type or print)
Joanna Eide

SIGNATURE

TITLE
Rules Coordinator

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: March 05, 2014
TIME: 11:18 AM
WSR 14-06-110

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

WDFW is also accepting comments on the proposed rule changes online. Members of the public may comment using the online form at: <http://wdfw.wa.gov/fishing/regulations/smelt/>.

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.....	Craig Burley	1111 Washington Street SE, Olympia, WA	(360) 902-2784
Implementation....	Craig Burley	1111 Washington Street SE, Olympia, WA	(360) 902-2784
Enforcement.....	Steven Crown, Chief	1111 Washington Street SE, Olympia, WA	(360) 902-2373

Has a small business economic impact statement been prepared under chapter 19.85 RCW or has a school district fiscal impact statement been prepared under section 1, chapter 210, Laws of 2012?

Yes. Attach copy of small business economic impact statement or school district fiscal impact statement.

A copy of the statement may be obtained by contacting:

Name: Dayv Lowry
Address: 1111 Washington St. SE
6th Floor
Olympia, WA 98501

phone (360) 902-2558
fax (360) 902-2943
e-mail dayv.lowry@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: This proposed rulemaking does not involve hydraulics.

Attachment A

Puget Sound Smelt Fishing Regulations Options

Explanatory Statement

- **Option 1 - No change**

Under current state rules, commercial fishing for smelt in Puget Sound is open from 8 a.m. Sunday to 8 a.m. Friday during seasonal openings. Recreational smelt fishing is open year-round, except in Hood Canal where it is closed. The use of dip nets is allowed from 8 a.m. Friday to 8 a.m. Wednesday. Jig gear can be used seven days per week.

- **Option 2 - Reduce both commercial and recreational use**

Reduce both commercial and recreational use: Commercial smelt fishing would be closed Sundays and would be allowed only from 6 a.m. to 10 p.m. Monday through Thursday during seasonal openings in each area. Inactive commercial smelt fisheries, including dip bag and purse seine, which have not been in use for at least 10 years, would be closed. Recreational smelt fishing would be closed overnight except for the use of jig gear, which could be used seven days per week. Dip nets would be allowed for recreational use from 6 a.m. to 10 p.m. Friday through Tuesday.

- **Option 3 - Close commercial fishing, reduce recreational use**

Close commercial fishing, reduce recreational use: All commercial fishing for smelt in Puget Sound would be closed. Recreational smelt fishing would be closed overnight except for the use of jig gear, which could be used seven days per week. Dip nets would be allowed for recreational use from 6 a.m. to 10 p.m. Friday through Tuesday.

Attachment B

Small Business Impact Statement

Puget Sound Smelt Fishery Rule Changes

1. Description of the reporting, record keeping and other compliance requirements of the proposed rules.

The proposed rule changes will affect the commercial smelt fishing industry within Puget Sound. There are three distinct alternatives being proposed:

1. Status quo, which would not result in any changes to the fishery.
2. A reduction in fishery opportunity by closing the fishery on Sunday, and limiting harvest during all open days to hours between 6AM and 10PM.
3. Closing commercial smelt fishing in Puget Sound entirely.

Throughout this statement, the alternatives will be referred to as Options 1, 2, and 3, respectively. The analysis is based on fishery performance from 2004-13, the most recent decade for which complete data are available.

2. Kinds of professional services that a small business is likely to need in order to comply with such requirements.

No additional professional services would be needed by a small business to comply with the proposed fishery changes under any of the options.

3. Costs of compliance for businesses, including costs of equipment, supplies, labor and increased administrative costs.

None of the options should result in additional costs to small businesses.

4. Will compliance with the rule cause businesses to lose sales or revenue?

Options 2 and 3 will result in lost profits for small businesses. Option 2 is projected to reduce fishery harvest by nearly 40%, with an anticipated loss of 40% of revenue. This may not be the case if the market price of smelt increases due to decreased supply, which would result in profit losses of less than 40%.

Option 3 would result in complete loss of income for fishers and marketers who specialize in smelt and do not profit from the sale of any other species.

5. Cost of compliance for the ten percent of businesses that are the largest businesses required to comply with the proposed rules, using one or more of the following as a basis for comparing costs:

- (a) cost per employee;**
- (b) cost per hour of labor; or**
- (c) cost per \$100 of sales.**

The agency selected option (c) to compute costs of compliance.

Option 1 would result in no costs to businesses.

Option 2 would cost \$40 per \$100 of sales, assuming that availability of marketable product decreases 40% but all other costs, and the price per pound of fish, remain stable.

Option 3 would result in a complete loss of profits, or \$100 per \$100 of sales.

Now compare the largest businesses' cost of compliance with the cost of compliance for small businesses. Will this rule have a disproportionate impact on small businesses?

No, all businesses involved in this fishery are small businesses.

6. Steps taken by the agency to reduce the costs of the rule on small businesses or reasonable justification for not doing so.

The agency considered an array of rule change options ranging from partial to complete impacts on smelt fisheries. While decreased harvest for conservation purposes was the goal, consideration was given to perpetuation of the fishery.

7. A description of how the agency will involve small businesses in the development of the rule.

The agency sent a letter to known participants of the affected fisheries on January 23, 2014. On January 30, 2014, WDFW held a meeting on the potential changes and invited all participants of the affected fisheries. A web page was created to solicit additional comments from participants, as well as members of the public. An additional open public meeting will be held on March 21, 2014, and an opportunity to provide written and oral comments on the proposed rule changes will occur at the April Fish and Wildlife Commission meeting on April 11-12, 2014.

8. A list of industries that will be required to comply with this rule.

All fishers participating in the Puget Sound commercial smelt fishery will be required to comply with changes to the rules.

9. An estimate of the number of jobs that will be created or lost as the result of compliance with the proposed rule.

Only option 3 is anticipated to have an impact on jobs associated with this fishery. A complete closure of the fishery could result in as many as 7 lost jobs. However, some fishers may turn to the exploitation of other species, resulting in no loss of jobs.

OPTION 2

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.

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(~~(r)~~) 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((,)) 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.

OPTION 3

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.

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

WAC 220-49-011 Herring(~~(,)~~) and 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(~~(,)~~) and anchovy ((and smelt)) 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 anchovy commercial fishery 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 drag seine gear and retaining 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(~~(,)~~) and anchovy ((and smelt fishing)) commercial fisheries-Purse seine. (1) (~~(Lawful)~~) Gear requirements: It is unlawful to operate purse seine gear in the Puget Sound herring and anchovy commercial 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. A

violation of this subsection is punishable under RCW 77.15.520, Commercial fishing-Unlawful gear or methods-Penalty.

~~(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.~~

~~(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 commercial 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)) It is unlawful to operate dip bag net gear in the Puget Sound herring and anchovy commercial 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.)) 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. A violation of this subsection is punishable under RCW 77.15.520, Commercial fishing-Unlawful gear or methods-Penalty.

(2) 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-Seasons)) commercial fishery-Closed. 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 — July 1 to April 15.~~
- ~~(2) Area 22B — November 1 to April 15.~~
- ~~(3) Areas 24A, 24B, 24C, and 24D — July 1 to April 15.~~
- ~~(4) Areas 25A and 25E — November 1 to April 15.~~
- ~~(5) Areas 26B, 26C, 26D, 28B, and 28C — October 1 to April 15 except those waters within 200 feet of shore adjacent to department property at Ross Point in Area 26C are closed to commercial smelt harvest at all times, and those waters of Sinclair Inlet west of a line due south from the ferry dock in Bremerton are open only 8:01 a.m. Wednesday through 7:59 a.m. Friday of each week during the open period.~~
- ~~(6) Areas 27A, 27B and 27C — Closed year round.~~
- ~~(7) Areas 28A and 28D — September 1 to April 15.~~
- ~~(8) All other areas open the entire year)). A violation of this section is punishable under RCW 77.15.550, Violation of commercial fishing area or time—Penalty.~~

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-49-057 Smelt fishing—Weekly periods.

OPTIONS 2 & 3

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.