



RULE-MAKING ORDER

CR-103E (July 2011)
(Implements RCW 34.05.350)

Agency: Washington Department of Fish and Wildlife

Emergency Rule Only

Effective date of rule:

Emergency Rules 17-147

- Immediately upon filing
- Later (specify)

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

- Yes
 - No
- If Yes, explain:

Purpose: Amend the Sultan River authorized work time in the Gold and Fish Pamphlet to protect fall Chinook, Coho and Steelhead because a new fish passage structure now allows anadromous fish to spawn above the City of Everett's municipal drinking water diversion dam.

Citation of existing rules affected by this order:

Repealed: WAC 220-660-30000A
 Amended: WAC 220-660-300
 Suspended:

Statutory authority for adoption: RCW 77.04.012, 77.04.020, and 77.12.047

Other authority :

EMERGENCY RULE

Under RCW 34.05.350 the agency for good cause finds:

- That immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest.
- That state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule.
- That in order to implement the requirements or reductions in appropriations enacted in any budget for fiscal year 2009, 2010, 2011, 2012, or 2013, which necessitates the need for the immediate adoption, amendment, or repeal of a rule, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the fiscal needs or requirements of the agency.

Reasons for this finding: (See Attachment A)

Date adopted: June 29, 2017

NAME (TYPE OR PRINT)

J W Unsworth

SIGNATURE

TITLE

Director

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: June 29, 2017

TIME: 3:41 PM

WSR 17-14-079

(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Federal statute:	New	_____	Amended	_____	Repealed	_____
Federal rules or standards:	New	_____	Amended	_____	Repealed	_____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>1</u>	Repealed	<u>1</u>
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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	_____

Attachment A – Amendment of Sultan River Authorized Work Times

The Washington Department of Fish and Wildlife (WDFW) must revise the authorized work times in the Gold and Fish Pamphlet for the Sultan River upstream of the City of Everett's municipal drinking water diversion dam located at river mile 9.4. Work on the diversion dam completed in October 2016 now enables anadromous species of salmon and trout found in the lower Sultan River to pass above the diversion dam to spawn and rear. Since November 2016, fisheries biologists from Snohomish Public Utilities District have documented anadromous fish above the diversion dam.

The current authorized work time for the section of river upstream of the diversion to Elk Creek and upstream of Elk Creek is July 16 to February 28. This work time protected resident trout spawning and incubation areas. Now WDFW must amend the authorized work time for the section of river upstream of the diversion dam to river mile 15.7 (0.7 river miles below the Culmback Dam) from July 16 to February 28 to August 1 to August 31 to protect fall Chinook and Coho salmon and Steelhead spawning and incubation areas as well. Fall Chinook spawning and incubation occur from September 1 to April 30; Coho spawning and incubation occur from November 1 to March 31 and Steelhead spawning and incubation occur from March 1 to July 31. Steelhead and fall Chinook are (state/federally) listed species. The authorized work time from river mile 15.7 upstream to Elk Creek and upstream of Elk Creek will remain unchanged. See Table 1. The spawning and incubations times are based on data from Sultan River spawning ground surveys conducted by the Snohomish Public Utilities District, WDFW and others.

Without modification to the work windows, spawning anadromous fish could be impacted by mineral prospectors working under the statewide Gold and Fish pamphlet during the 2017 spawning season because prospecting activities could take place where fish are spawning.

WDFW is working with mineral prospectors who have individual HPAs or pending applications for individual HPAs to identify locations where spawning is unlikely to occur due to site-specific conditions. WDFW can issue individual HPAs that vary the work windows where there is no impact to fish life. Mineral prospectors may continue to submit applications for individual HPAs which will have a site-specific authorized work time. There is no fee for a prospecting HPA.

WDFW anticipates rule-making for a permanent modification to the rule to begin in September 2017 and encourages all stakeholders with information about fish presence or absence to participate in the public process.

NEW SECTION

WAC 220-660-30000B Mineral prospecting.

Notwithstanding the provisions of WAC 220-660-300, effective immediately until further notice the following rules apply. Unless otherwise amended, all permanent rules remain in effect.

County	Mineral Prospecting Allowable Dates	Prospecting Equipment with 4 1/4" nozzle	Prospecting Equipment with 51/4" Nozzle
Snohomish County			
Sultan River (07.0881) – Mouth to Diversion Dam at river mile 9.4	August 1 – August 15	X	X
Sultan River (07.0881) – Diversion Dam <u>to river mile 15.7 (0.7 river miles downstream of Culmback Dam)</u>	August 1 – August 31	X	X
<u>Sultan River (07.0881) – Upstream of river mile 15.7 to Elk Creek</u>	July 16 – February 28	<u>X</u>	<u>X</u>
Sultan River (07.0881) – Upstream of Elk Creek	July 16 – February 28	X	-

REPEALER

The following section of the Washington Administrative Code is repealed:

WAC 220-660-30000A Mineral Prospecting. (17-132)