



PROPOSED RULE MAKING

CR-102 (July 2022)
(Implements RCW 34.05.320)
Do **NOT** use for expedited rule making

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STATE OF WASHINGTON
FILED

DATE: October 17, 2022
TIME: 2:48 PM

WSR 22-21-099

Agency: Washington Department of Fish and Wildlife (WDFW P2022-14)

- Original Notice**
- Supplemental Notice to WSR** _____
- Continuance of WSR** _____

- Preproposal Statement of Inquiry was filed as WSR 22-16-099 on August 2, 2022 ; 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); or**
- Proposal is exempt under RCW _____.**

Title of rule and other identifying information: (describe subject) The department is considering amendments to commercial Eulachon fishing rules- WAC 220-358-060 Smelt.

Hearing location(s):

Date:	Time:	Location: (be specific)	Comment:
January 26-28, 2023	8:00am	Please click the link below to 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 (Note: This is **NOT** the **effective** date)

<p>Submit written comments to:</p> <p>Name: Kelly Henderson</p> <p>Address:</p> <p>Email: EulachonFishing@PublicInput.com</p> <p>Fax:</p> <p>Other: Website: https://publicinput.com/EulachonFishing</p> <p>Phone for voicemail comments: 855-925-2801 project code: 4237</p> <p>By (date) <u>January 28, 2023</u></p>	<p>Assistance for persons with disabilities:</p> <p>Contact <u>Civil Rights Compliance Coordinator</u></p> <p>Phone: (360) 902-2349</p> <p>Fax:</p> <p>TTY: 1-800-833-6388 or (711)</p> <p>Email: Title6@dfw.wa.gov</p> <p>Other: https://wdfw.wa.gov/accessibility/requests-accomodation</p> <p>By (date) <u>January 28, 2023</u></p>
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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 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

Is rule necessary because of a:

Federal Law? Yes No

Federal Court Decision? Yes No

State Court Decision? Yes No

If yes, CITATION:

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 the Federal Endangered Species Act and as part of the Columbia River Compact process.

Type of proponent: Private Public Governmental
Name of proponent: (person or organization) Washington Department of Fish and Wildlife

Name of agency personnel responsible for:

	Name	Office Location	Phone
Drafting:	Laura Heironimus	Ridgefield, WA	360-719-0677
Implementation:	Laura Heironimus	Ridgefield, WA	360-719-0677
Enforcement:	Captain Jeff Wickersham	Ridgefield, WA; Montesano, WA	360-906-6714 or 360-249-4628 ext. 252

Is a school district fiscal impact statement required under [RCW 28A.305.135](#)? Yes No

If yes, insert statement here:

The public may obtain a copy of the school district fiscal impact statement by contacting:

Name:
Address:
Phone:
Fax:
TTY:
Email:
Other:

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:
TTY:
Email:
Other:

No: Please explain: Not required under RCW 34.05.328 5(a)iii

Regulatory Fairness Act and Small Business Economic Impact Statement
Note: The [Governor's Office for Regulatory Innovation and Assistance \(ORIA\)](#) provides support in completing this part.

(1) Identification of exemptions:
This rule proposal, or portions of the proposal, **may be exempt** from requirements of the Regulatory Fairness Act (see [chapter 19.85 RCW](#)). For additional information on exemptions, consult the [exemption guide published by ORIA](#). Please check the box for any applicable exemption(s):

This rule proposal, or portions of the proposal, is exempt under [RCW 19.85.061](#) because this rule making is being adopted solely to conform and/or comply with federal statute or regulations. Please cite the specific federal statute or regulation this rule is being adopted to conform or comply with, and describe the consequences to the state if the rule is not adopted.
Citation and description:

This rule proposal, or portions of the proposal, is exempt because the agency has completed the pilot rule process defined by [RCW 34.05.313](#) before filing the notice of this proposed rule.

This rule proposal, or portions of the proposal, is exempt under the provisions of [RCW 15.65.570\(2\)](#) because it was adopted by a referendum.

- This rule proposal, or portions of the proposal, is exempt under [RCW 19.85.025\(3\)](#). Check all that apply:
- | | |
|---|---|
| <input type="checkbox"/> RCW 34.05.310 (4)(b)
(Internal government operations) | <input type="checkbox"/> RCW 34.05.310 (4)(e)
(Dictated by statute) |
| <input type="checkbox"/> RCW 34.05.310 (4)(c)
(Incorporation by reference) | <input type="checkbox"/> RCW 34.05.310 (4)(f)
(Set or adjust fees) |
| <input type="checkbox"/> RCW 34.05.310 (4)(d)
(Correct or clarify language) | <input type="checkbox"/> RCW 34.05.310 (4)(g)
(i) Relating to agency hearings; or (ii) process requirements for applying to an agency for a license or permit) |

- This rule proposal, or portions of the proposal, is exempt under [RCW 19.85.025\(4\)](#) (does not affect small businesses).
- This rule proposal, or portions of the proposal, is exempt under RCW _____.

Explanation of how the above exemption(s) applies to the proposed rule: 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.

(2) Scope of exemptions: *Check one.*

- The rule proposal is fully exempt (*skip section 3*). Exemptions identified above apply to all portions of the rule proposal.
- The rule proposal is partially exempt (*complete section 3*). The exemptions identified above apply to portions of the rule proposal, but less than the entire rule proposal. Provide details here (consider using [this template from ORIA](#)):
- The rule proposal is not exempt (*complete section 3*). No exemptions were identified above.

(3) Small business economic impact statement: *Complete this section if any portion is not exempt.*

If any portion of the proposed rule is **not exempt**, does it impose more-than-minor costs (as defined by RCW 19.85.020(2)) on businesses?

- No Briefly summarize the agency's minor cost analysis and how the agency determined the proposed rule did not impose more-than-minor costs. _____
- Yes Calculations show the rule proposal likely imposes more-than-minor cost to businesses and a small business economic impact statement is required. Insert the required small business economic impact statement here:

The public may obtain a copy of the small business economic impact statement or the detailed cost calculations by contacting:

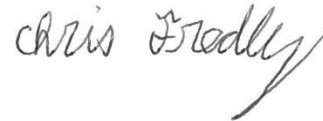
Name:
Address:
Phone:
Fax:
TTY:
Email:
Other:

Date: 10/17/2022

Name: Chris Fredley for Annie Szvetecz

Title: Agency Rules Analyst

Signature:



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.)~~