



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 11-42

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: The purpose of the proposal is to close the otter trawl fishery for scallops in all areas of Puget Sound, due to concerns over the adverse impacts of otter-trawl fishing on rockfish in Puget Sound.

Reasons supporting proposal: This regulation change is needed to comply with provisions the Endangered Species Act (ESA) and to provide protection for rockfish species in Puget Sound. On July 27, 2010, a federal decision to list two species of rockfish as Threatened, and one species of rockfish as Endangered, in Puget Sound became effective. The intent of this regulation is to comply with the ESA and to protect the listed species from capture in the scallop trawl fisheries. While the ESA listing does not cover all of Puget Sound, the agency has concluded that it is necessary to make these restrictions effective in all Puget Sound Marine Fish-Shellfish Management and Catch Reporting Areas due to concern that leaving a small portion of Puget Sound open to this commercial fishing gear will concentrate fishing effort in that area, leading to challenges with conservation and conducting an orderly fishery.

Citation of existing rules affected by this order:

Repealed:
Amended: WAC 220-52-069 Scallop fishery—Puget Sound
Suspended:

Statutory authority for adoption: RCW 77.04.020, 77.12.045, and 77.12.047

Other authority : 50 CFR, Parts 223 and 224

PERMANENT RULE (Including Expedited Rule Making)

Adopted under notice filed as WSR 10-21-122 on October 20, 2010 (date).

Describe any changes other than editing from proposed to adopted version: None.

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: February 5, 2011

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: March 23, 2011

TIME: 11:17 AM

WSR 11-07-108

**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	1	Repealed	_____
Recently enacted state statutes:	New	_____	Amended	_____	Repealed	_____

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

New	_____	Amended	_____	Repealed	_____
-----	-------	---------	-------	----------	-------

The number of sections adopted in the agency's own initiative:

New	_____	Amended	1	Repealed	_____
-----	-------	---------	---	----------	-------

The number of sections adopted in order to clarify, streamline, or reform agency procedures:

New	_____	Amended	_____	Repealed	_____
-----	-------	---------	-------	----------	-------

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 Order 00-153, filed 8/16/00, effective 9/16/00)

WAC 220-52-069 Scallop fishery--Puget Sound. It is unlawful to fish for or possess scallops taken for commercial purposes from Puget Sound except as provided for in this section:

(1)(a) Rock scallops and weathervane scallops. It is unlawful at any time to take or possess rock or weathervane scallops taken for commercial purposes from Puget Sound unless a person has first obtained a scallop brood stock permit issued by the department. The permit will specify the species, location, time, and quantity of scallops that can be taken for brood stock or culture purposes.

(b) Licensing:

~~((i))~~ A shellfish dive fishery license is a license that allows a permittee to retain rock and weathervane scallops for brood stock purposes.

~~((ii) Shrimp trawl--Puget Sound and food fish trawl--Puget Sound fishery licenses are licenses that allow a permittee to retain weathervane scallops for brood stock purposes.)~~

(2) Pink scallops and spiny scallops.

(a) General provisions:

(i) Pink and spiny scallops may be harvested from Puget Sound at any time.

(ii) The minimum commercial pink or spiny scallop size is 2 inches in length from the hinge to the outer margin of the shell.

(iii) Persons fishing for pink or spiny scallops must have approval of the Washington state department of health. Scallops may only be taken from areas approved by the department of health and any fisher taking pink or spiny scallops must have on board the harvesting vessel a valid department of health shellfish toxin sampling agreement.

(iv) No other shellfish except octopus and squid (~~or food fish~~) may be retained while scallop fishing or while scallop are possessed aboard the scallop fishing vessel.

(b) Trawl gear provisions: Otter trawl gear may not be used to fish for scallops in Puget Sound at any time.

~~((i) Trawlers may only use single beam trawls not exceeding ten feet in width and having mesh size no smaller than two inches in the intermediate portion and cod end of the trawl.~~

~~(ii) Trawling for scallops is prohibited in waters less than 120 feet below mean lower low water.~~

~~(iii) Trawling for scallops is prohibited in the following areas:~~

~~(A) All waters closed to bottomfish trawl in WAC 220-48-015.~~

~~(B) Shrimp Districts 1 and 3 as defined in WAC 220-52-051.~~

~~(C) Sea Urchin Districts 1 and 2 closed waters defined in WAC 220-52-073 (1)(a)(i), (ii), and (1)(b)(ii).~~

~~(iv) Licensing: A food fish trawl--Puget Sound fishery~~

~~license is the license required to operate the gear provided for in this section.)~~

(c) Shellfish diver gear provisions:

(i) Diving for scallops is prohibited in Sea Urchin Districts 1 and 2 closed waters as defined in WAC 220-52-073 (1)(a)(i), (ii), (1)(b)(i), and (ii).

(ii) Licensing: A shellfish dive fishery license is the license required to take scallops with shellfish diver gear.