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 12-61
☒ 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 this proposal is to amend several WAC sections to update references from Title 75 to the proper reference of Title 77 RCW. Additionally, some substitutions and additions of words are made to clarify the rules and rectify typographical errors. WAC 232-14-010 is repealed, as it was determined the section was outdated and unnecessary.

Reasons supporting proposal: This rule change proposal was discussed during the Fish and Wildlife Commission conference call on April 6, 2012. The proposed changes were adopted by the Commission at the April 13, 2012, Commission meeting. The changes are part of an agency WAC overhaul project that will increase clarity, accuracy, and efficiency of the WDFW administrative code.

Citation of existing rules affected by this order:
Repealed: WAC 232-14-010
Amended: WAC 220-12-010, 220-12-020, 220-16-211, 220-20-015, 220-20-051, 220-20-065, 220-88-020, 220-88-040.
Suspended:

Statutory authority for adoption: RCW 34.05.353(1)(b), (c), and (d); RCW 77.12.047 and 77.50.050; chapter 77.65 and 77.70 RCW.

Other authority : N/A

PERMANENT RULE (Including Expedited Rule Making)
Adopted under notice filed as WSR 12-03-120 on January 18, 2012 (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: April 13, 2012

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: April 13, 2012
TIME: 2:43 PM

WSR 12-09-046

(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	_____

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

New	_____	Amended	8	Repealed	1

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 WSR 98-06-031, filed 2/26/98, effective 5/1/98)

WAC 220-12-010 Food fish--Classification. The following ((~~fishes~~)) species are classified as food fish under RCW ((~~75.08.080~~)) 77.12.047 and are subject to the provisions of this title:

Barracuda	
Pacific barracuda	*Sphyraena argentea*
Cyprinids	
Carp	*Cyprinus carpio*
Cods and hake	
Pacific hake or whiting	*Merluccius productus*
Walleye pollock	*Theragra chalcogrammus*
Pacific Tomcod	*Microgadus proximus*
Pacific Cod or true cod	*Gadusmacrocephalus*
Flounder, sole and halibut	
Butter sole or Bellingham sole	*Isopsetta isolepis*
C-O sole	*Pleuronichtys coenosus*
Dover sole	*Microstomus pacificus*
English sole	*Parophrys vetulus*
Flathead sole	*Hippoglossoides elassodon*
Pacific halibut	*Hippoglossus stenolepis*
Petrale sole	*Eopsetta jordani*
Rex sole	*Glyptocephalus zachirus*
Rock sole	*Lepidopsetta bilineata*
Pacific sand dab	*Citharichthys sordidus*
Sand sole	*Psettichthys melanostictus*
Slender sole	*Lyopsetta exilis*
Speckled sand dab	*Citharichthys stigmaeus*
Starry flounder	*Platichthys stellatus*
Turbot or Arrowtooth flounder	*Atheresthes stomias*
All other species of sole and flounder	(Pleuronectiformes)
Giant wrymouth	*Delolepsis gigantea*
Greenling	
Lingcod	*Ophiodon elongatus*
Rock greenling	*Hexagrammos superciliosus*
Kelp greenling	*Hexagrammos decagrammus*
All other species of greenling	(Hexagrammidae)
Herring and herring-like fishes	

Northern anchovy	*Engraulis mordax*
Pacific sand lance or candlefish	*Ammodytes hexapterus*
Pacific herring	*Clupea harengus pallasi*
Pacific sardine or pilchard	*Sardinops sagax*
American shad	*Alosa sapidissima*

Mackerels, tunas and jacks (carangids)

Pacific bonito	*Sarda chiliensis*
Pacific mackerel	*Scomber japonicus*
Jack mackerel	*Trachurus symmetricus*
Monterey Spanish mackerel	*Scomberomorus concolor*
Spanish mackerel	*Scomberomorus maculatus*
Yellowtail	*Seriola dorsalis*
Albacore	*Thunnus alalunga*
Bluefin tuna	*Thunnus thynnus*
Skipjack tuna	*Euthynnus pelamis*
Yellowfin tuna	*Thunnus albacares*
All other species of tunas and mackerels	(Scombridae)
Pacific pomfret	*Brama japonica*
Pacific pompano	*Peprilus simillimus*
Plainfin midshipman	*Parichthys notatus*
Ratfish	*Hydrolagus colliei*
Rattails, all species	(Coryphaenoididae)

Skates

Longnose skate	*Raja rhina*
Big skate	*Raja binoculata*
All other species of skates	(Rajidae)

Rockfish

Bocaccio	*Sebastes paucispinis*
Black rockfish	*Sebastes melanops*
Brown rockfish	*Sebastes auriculatus*
Copper rockfish	*Sebastes caurinus*
Greenstriped rockfish	*Sebastes elongatus*
Canary rockfish	*Sebastes pinniger*
Pacific Ocean perch	*Sebastes alutus*
Yelloweye or rasphead rockfish	*Sebastes ruberrimus*
Rosefish or splitnose rockfish	*Sebastes diploproa*
Silvergray rockfish	*Sebastes brevispinis*
Quillback rockfish	*Sebastes maliger*
Yellowtail rockfish	*Sebastes flavidus*
All other species of rockfish	(Scorpaenidae)
Sablefish	*Anoplopoma fimbria*

Salmon

Chinook or King salmon (except in its landlocked form as defined in WAC 232-12-018)	*Oncorhynchus tshawytscha*
Chum or dog salmon	*Oncorhynchus keta*
Pink or humpback	*Oncorhynchus gorbuscha*
Coho or silver (except in its landlocked form as defined in WAC 232-12-018)	*Oncorhynchus kisutch*
Sockeye or blue back	*Oncorhynchus nerka*
Masu	*Oncorhynchus masu*
Atlantic salmon (except in its landlocked form)	*Salmo salar*

Sculpins

Brown Irish lord	*Hemilepidotus spinosus*
Buffalo sculpin	*Enophrys bison*
Cabezon	*Scorpaenichthys marmoratus*
Great sculpin	*Myoxocephalus polyacanthocephalus*
Pacific Staghorn sculpin	*Leptocottus armatus*
Red Irish lord	*Hemilepidotus hemilepidotus*

Seabass and drums

White seabass	*Cynoscion nobilis*
All other seabass and drums	(Sciaenidae and Serranidae)

Sharks

Sixgill shark	*Hexanchus griseus*
Soupfin shark	*Galeorhinus zyopterus*
Dogfish or spiny dogfish	*Squalus acanthias*
All other species of sharks	(Squaliformes and Hexanchiformes)

Smelts

Eulachon or Columbia River smelt	*Thaleichthys pacificus*
Longfin smelt	*Spirinchus dilatus*
Surf smelt	*Hypomesus pretiosus*
All other species of smelt	(Osmeridae)

Sturgeons

Green sturgeon	*Acipenser medirostris*
White sturgeon	*Acipenser transmontanus*

Surfperches

Blue perch or striped seaperch	*Embiotoca lateralis*
Kelp perch	*Brachyistius frenatus*
Redtail surfperch	*Amphistichus rhodoterus*
Shiner perch	*Cymatogaster aggregata*
Pile perch	*Rhacochilus vacca*
Walleye surfperch	*Hyperprosopon argenteum*
White seaperch	*Phanerodon furcatus*
All other species of perch	(Embiotocidae)
Wolf-eel	Anarrhichthys ocellatus

Hagfishes

Pacific hagfish	*Eptatretus stouti*
Black hagfish	*Eptatretus deani*

AMENDATORY SECTION (Amending Order 10-64, filed 3/19/10, effective 5/1/10)

WAC 220-12-020 Shellfish--Classification. The following species are classified as shellfish under RCW ((~~75.08.080~~)) 77.12.047 and are subject to the provisions of this title:

Abalone	
Pinto abalone	*Haliotis kamtschatkana*
Mussel	
Blue mussel	*Mytilus trossulus*
California mussel	*Mytilus californianus*
Mediterranean mussel	*Mytilus galloprovincialis*
Scallops	
Pacific pink scallop	*Chlamys rubida*
Rock scallop	*Crassadoma gigantea*
Spiny scallop	*Chlamys hastata*
Weathervane scallop	*Patinopecten caurinus*
Clams	
All macoma clams	*Macoma spp.*
Butter clam	*Saxidomus giganteus*
Common cockle	*Clinocardium nuttallii*
Geoduck	*Panopea abrupta*
Horse or Gaper clam	*Tresus nuttallii*, *Tresus capax*
Mud or soft shell clam	*Mya arenaria*
Manila clam	*Venerupis philippinarum*
Piddock	*Zirfaea pilsbryi*
Razor clam	*Siliqua patula*
Rock or native little neck clam	*Leukoma staminea*
Varnish clam	*Nuttallia obscurata*
All other marine clams existing in Washington in a wild state	
Oysters	
All oysters	(Ostreidae)
Squid	
All squid	Sepiolida or Teuthida
Octopus	
Octopus	*Enteroctopus dolfleini*

Barnacles	
Goose barnacle	*Pollicipes polymerus*
Shrimp	
Coonstripe shrimp	*Pandalus danae*
Coonstripe shrimp	*Pandalus hypsinotus*
Ghost or sand shrimp	*Neotrypaea spp.*
Humpy shrimp	*Pandalus goniurus*
Mud shrimp	*Upogebia pugettensis*
Ocean pink shrimp	*Pandalus jordani*
Pink shrimp	*Pandalus eous*
Sidestripe shrimp	*Pandalopsis dispar*
Spot shrimp	*Pandalus platyceros*
Crab	
Dungeness or Pacific crab	*Cancer magister*
Red rock crab	*Cancer productus*
Tanner crab	*Chionoecetes tanneri*
King and box crab	*Lopholithodes spp.*
Crawfish	
Crawfish	*Pacifastacus sp.*
Sea cucumber	
Sea cucumber	*Parastichopus californicus*
Sea urchin	
Green urchin	*Strongylocentrotus droebachiensis*
Red urchin	*Strongylocentrotus franciscanus*
Purple urchin	*Strongylocentrotus purpuratus*

AMENDATORY SECTION (Amending Order 920, filed 5/13/71)

WAC 220-16-211 Geographical definitions--Puget Sound tributaries. The term "Puget Sound tributaries" ((~~shall be construed to~~)) includes the waters of all fresh water rivers and streams tributary to Puget Sound as defined in WAC ((~~220-15-210~~)) 220-16-210 and ((~~including~~)) all tributaries flowing into said rivers and streams.

AMENDATORY SECTION (Amending Order 02-278, filed 11/6/02, effective 12/7/02)

WAC 220-20-015 Lawful and unlawful acts--Salmon. (1) It is unlawful to operate in any river, stream or channel any gill net gear longer than three-fourths the width of the stream; this provision shall supersede all other regulations in conflict with it.

(2) It is unlawful to operate any net for removing snags from state waters without permit from the department ((~~of fisheries~~)).

(3) It is unlawful to take, fish for or possess for commercial purposes chinook salmon less than 28 inches in length or coho salmon less than 16 inches in length, except as follows:

(a) In the Puget Sound, Grays Harbor, Willapa Bay and Columbia River commercial salmon net fisheries, there is no minimum size limit on salmon taken with gill net gear.

(b) In the Pacific Ocean commercial salmon troll fishery, frozen chinook salmon, dressed heads off ((~~shall~~)), must be 21 1/2 inches minimum, and frozen coho salmon, dressed heads off ((~~shall~~)), must be 12 inches minimum, measured from the midpoint of the clavicle arch to the fork of the tail.

(c) This subsection does not apply to salmon raised in aquaculture.

(4) It is unlawful to set, maintain, or operate any reef net gear at any location which places the stern ends of either or both reef net boats of said gear less than a distance of 800 feet in front of or behind the head buoys of any row or reef net gear, within the boundaries of the Lummi Island Reef Net Fisheries Area, as described in RCW ((~~75.12.140~~)) 77.50.050.

(5) It is ((~~lawful~~)) permissible to possess salmon for any purpose ((~~which~~)) that were lawfully obtained from state and federal government fish hatcheries and facilities. Subsections (3) and (12) of WAC 220-20-010 and subsection (3) of WAC 220-20-015 do not apply to salmon possessed under this subsection.

(6) It is unlawful to take or fish for food fish from a commercial salmon trolling vessel with gear other than lawful troll line gear while said vessel is engaged in commercial fishing or has commercially caught fish aboard.

(7) It ((~~shall be~~)) is unlawful to angle for salmon for personal use from any vessel that is engaged in commercial salmon trolling or has commercially caught salmon aboard.

AMENDATORY SECTION (Amending Order 94-162, filed 11/14/94, effective 12/15/94)

WAC 220-20-051 Vessel designation requirements. (1) In any licensed fishery for which a vessel is required under chapter ((~~75.28~~)) 77.65 RCW, or for any delivery of food fish or shellfish, or for any charter fishery, it is unlawful to fish for, harvest, deliver, or possess food fish or shellfish unless:

(a) The licensee has designated the vessel from which the food fish or shellfish are to be taken or delivered((~~,~~));

(b) The department has issued a commercial license to the licensee showing the vessel so designated((~~,~~)); and

(c) The vessel operator has the commercial license in physical possession.

(2) The following definitions apply to this section:

(a) "Documentation" means vessel documentation by the United States Coast Guard showing eligibility for the fishery. Once documentation is presented as evidence of ownership, it becomes the only acceptable evidence of ownership unless the vessel is remeasured, found to be less than five net tons, and no longer eligible for documentation.

(b) "Initial designation" means the designation by an individual licensee of a vessel to be used in a commercial fishery, for delivery of food fish or shellfish, or for charter fishing. Designation by that licensee on additional licenses is not "initial designation," and required evidence of ownership is the same as for continuing designation.

(c) "Continuing designation" means reapplication for a commercial license with no change in vessel designation.

(3) A licensee does not have to own the vessel being designated on the license. However, each licensee initially designating a vessel, except nontransferable emergency salmon delivery licensees, and every licensee continuing designation after the fourth continuous designation, must offer evidence of ownership. The following is the only acceptable evidence of ownership:

(a) For initial designation of a vessel measuring less than thirty-two feet in length, evidence of ownership may be either current state vessel registration or current documentation.

(b) For initial designation of a vessel thirty-two feet or greater in length, evidence of ownership is:

(i) Current documentation; or

(ii) Coast Guard verification that the vessel does not meet the minimum tonnage requirement for documentation (simplified admeasurement); or

(iii) Verification from the American Bureau of Shipping that the vessel does not meet the minimum tonnage requirement for documentation (formal admeasurement).

(c) For continuing designation of vessel less than thirty-two feet in length, evidence of ownership may be either current state vessel registration or current documentation.

(d) For continuing designation of a vessel between thirty-two and thirty-six feet in length, evidence of ownership is current

state registration for vessels with state registration numbers or current documentation for documented vessels.

(e) For continuing designation of a vessel greater than thirty-six feet in length, evidence of ownership is:

(i) Current documentation; or

(ii) Coast Guard verification that the vessel does not meet the minimum tonnage requirement for documentation (simplified admeasurement); or

(iii) Verification from the American Bureau of Shipping that the vessel does not meet the minimum tonnage requirement for documentation (formal admeasurement).

(4) Every vessel designated to participate in a commercial fishery or to deliver food fish or shellfish must have the official Coast Guard documentation number, complete state registration number, or Alaska department of fish and game registration number permanently displayed in ten-inch tall numbers, or letters and numbers, of proportionate width, clearly visible from each side of the vessel. It is unlawful to participate in a commercial fishery or deliver food fish or shellfish without having such numbers displayed. This subsection does not apply to salmon guide, charter, or nontransferable emergency salmon delivery licensees, or to Canadian vessels delivering under a nonlimited entry delivery license.

AMENDATORY SECTION (Amending Order 94-162, filed 11/14/94, effective 12/15/94)

WAC 220-20-065 Commercial licensing--Business organizations--Operator designation. Any person ((~~which~~)) that holds a commercial fishing license or delivery license and is a business organization may designate one natural person to act on behalf of the license holder to operate a designated vessel as provided for in this section:

(1) If the business is a sole proprietorship, the designated operator must be the sole proprietor.

(2) If the business is a partnership, the designated operator must be a partner.

(3) If the business is a corporation, the designated operator must be a corporate officer.

(4) In addition to the designated operator, a license holder ((~~who~~)) that is a business organization may designate up to two alternate operators.

(5) A license holder ((~~which~~)) that is a business organization may substitute the designated operator by surrendering the fishery license card, redesignating the operator under the criteria provided for in this section, and paying the replacement license fee provided for in RCW ((~~75.28.030~~)) 77.65.050.

AMENDATORY SECTION (Amending Order 92-89, filed 9/3/92, effective 10/4/92)

WAC 220-88-020 Experimental fishery permits. (1) The director will issue experimental fishery permits after the date the rules take effect designating a fishery as either an emerging commercial fishery or an expanding commercial fishery and establishing the number and qualifications of permit holders ((~~take effect~~)).

(2) Only persons meeting the following requirements may hold an experimental fishery permit:

(a) The person must hold a commercial fishing license under chapter ((~~75.28~~)) 77.65 RCW for the gear ((~~to~~)) that will be used with the experimental fishery permit, or the person must own a vessel that holds such a commercial fishing license. An experimental fishery permit is supplemental to a commercial fishing license, and may not be used unless the fisher or the fisher's vessel is currently licensed.

(b) No person ineligible to hold a commercial fishing license will be issued an experimental fishery permit. The person must meet the qualifications established for the experimental fishery permit that the person seeks.

(c) In the event an emerging or expanding commercial fishery arises from a trial commercial fishery, the director shall consider whether a fisher making application for an experimental fishery permit had previously held a trial commercial fishery permit for that fishery.

(3) An experimental fishery permit will not be issued for any species for which a license, endorsement, or validation limitation has been established pursuant to chapter ((~~75.30~~)) 77.70 RCW, or for any fishery under the jurisdiction of the secretary of commerce.

(4) The director may at any time close an emerging or expanding commercial fishery for conservation reasons.

AMENDATORY SECTION (Amending Order 92-89, filed 9/3/92, effective 10/4/92)

WAC 220-88-040 Trial commercial fishery permits. (1) Applications for trial commercial fishery permits must specify the species, fishing area, and fishing method to be used.

(2) The department will respond to any request for a trial commercial fishery permit within sixty days of receiving the

application.

(3) Only persons who hold a commercial fishing license under chapter ((~~75.28~~)) 77.65 RCW for the gear ((~~to~~)) that will be used with the trial commercial fishery permit, or persons who own a vessel that holds such a commercial fishing license, are eligible to hold a trial commercial fishery permit. A trial commercial fishery permit is supplemental to a commercial fishing license, and may not be used unless the fisher or the fisher's vessel is currently licensed.

(4) The director will issue a trial commercial fishery permit for a newly classified species only after the director has by rule classified the species as a food fish or shellfish in chapter 220-12 WAC. If emergency classification is required, the director will issue the trial commercial fishery permit only for the period of emergency classification, and will not renew the permit unless the department has received a request for permanent classification at least two weeks before the end of the permit period.

(5) The director may redesignate a trial commercial fishery as an emerging or expanding commercial fishery if the director finds that there is a need to limit participation. A trial commercial fishery permit for that fishery does not guarantee future eligibility for an experimental fishery permit.

(6) The director may at any time close a trial commercial fishery for conservation reasons.

REPEALER

The following chapter of the Washington Administrative Code is repealed:

WAC 232-14-010 Hydraulic Code guidelines.