

## **Concise Explanatory Statement (CES) Octopus and Cabezon Rule Making**

### **The following was proposed as part of this project:**

Amending WAC 220-20-100

Creating new WAC sections 220-16-881 through WAC 220-16-887

Amending WAC 220-56-235 Possession limits –Bottomfish.

Amending WAC 220-56-310 Shellfish—Daily limits.

Amending WAC 220-56-390 Squid, octopus.

### **A. Reasons for the proposals:**

The Washington Department of Fish and Wildlife (WDFW) wanted to make necessary adjustments to recreational fishing rules based on department data, public feedback, and changes in fish and shellfish populations. The department makes similar adjustments to recreational rules annually to maximize conservation and recreational-fishing opportunity.

The main objectives of this project were to: (1) Consider harvest changes to better protect the giant Pacific octopus; and (2) consider harvest changes for cabezon, shark, lingcod, and rockfish.

Amendments were as follows:

#### **1. Giant Pacific Octopus**

The Fish and Wildlife Commission (commission) received three petitions requesting amendments to sport fishing rules to protect octopuses from recreational harvest. These petitions were received after a giant Pacific octopus was legally harvested from the waters of a popular dive site at Seacrest Park in West Elliot Bay. The commission directed WDFW to develop a series of management options, a public input process, and a schedule to address protection of the giant Pacific octopus in waters of Puget Sound.

A 12-member ad hoc advisory group was formed to provide recommendations for management options. The advisory group's recommendations included four options for consideration:

- A. Maintain the status quo;
- B. Create two new WAC sections (220-16-881 and 220-16-883) and amend WAC 220-20-100 to establish two new marine preserves where harvest of all species is prohibited;
- C. Create seven new WAC sections (220-16-881 through 220-16-887) and amend WAC 220-20-100 to establish seven new marine preserves where harvest of giant Pacific octopuses is prohibited;

D. Amend WAC 220-20-100 to close Puget Sound to the recreational harvest of giant Pacific octopuses.

The department received more than 400 written comments, with the majority of comments in support of options C or D (listed above) as providing protection for giant Pacific octopuses.

2. Cabezon (Proposal 65)

The commission held a public hearing in February 2013 for amendments to the cabezon rules in WAC 220-56-235. The commission adopted a minimum size limit of 18 inches and a daily limit of one cabezon for Marine Areas 4 through 11 and 13. The commission directed staff to file a supplemental notice (WSR 13-10-083, filed on May 1, 2013) to limit the cabezon season by several months (i.e. consider a May 1 to June 15 season in these marine areas) as the changes were substantial from the original proposed rule.

The delay in rule adoption to allow for additional public comment for a cabezon season rule change resulted in all cabezon rule changes, as well as rule changes for shark, lingcod, and rockfish, within WAC 220-56-235 (Possession limits—Bottomfish), to be included in WSR 13-02-094.

The filing of WSR 13-10-083 on May 1, 2013 amended WAC 220-56-235 (Possession limits—Bottomfish) to limit the cabezon season by several months. On June 7<sup>th</sup>, 2013, the commission voted to keep the current season in place and not adopt a new cabezon season.

3. Sharks (Proposal 4)

The commission held a public hearing in February 2013 and adopted the proposal to close angling statewide for sixgill, sevengill, and thresher sharks. This proposal was in WAC 220-56-235.

4. Lingcod (Proposal 68)

The commission held a public hearing in February 2013 and adopted the proposal to reduce the minimum size for lingcod to 22 inches in Marine Area 4. This proposal was in WAC 220-56-235.

5. Rockfish (Proposal 66)

The commission held a public hearing in February 2013 and did not adopt the proposal to allow retention of black, blue, and yellowtail rockfish only in Marine Area 4 west of the Bonilla-Tatoosh Line. This proposal was in WAC 220-56-235.

6. Spot Shrimp (Proposal 63)

The commission held a public hearing in February 2013 and adopted the proposal to increase the spot shrimp daily quota from 80 to 200 per person in the Pacific Ocean, Marine Areas 1 through 4 (Marine Area 4 west of Bonilla-Tatoosh) only. This proposal was in WAC 220-56-310 (Shellfish—Daily limits).

**B. Differences between the text of the proposed rule and the text of the rule as adopted:**

Some changes occurred between the proposed rules and the text of the rules as adopted. These changes are as follows:

**1. WAC 220-16-881 through 220-16-887**

These proposed new rules, WAC 220-16-881 through -887, were withdrawn as part of WSR 13-19-006, filed on September 5, 2013. These rules were not adopted.

**2. WAC 220-20-100 General provisions—Marine protected areas**

Proposed amendments to this section were withdrawn on September 5, 2013, as part of WSR 13-19-006. The new marine protected areas that were proposed in this WAC were moved to WAC 220-56-390.

**3. WAC 220-56-235 Possession limits--Bottomfish**

- a. Reduced fishing limit for cabezon to one fish per day for Marine Areas 4,5,6,7,8,9, 10, 11, and 13.
- b. Implemented an 18-inch minimum length for cabezon in Marine Areas 4,5,6,7,8,9,10,11 and 13.
- c. Removed proposal for rockfish species retention.
- d. Removed proposal for cabezon season change.

**4. WAC 220-56-310 Shellfish – Daily limits**

- a. Removed proposal for two new marine areas.
- b. Removed squid and octopus sections and moved them to WAC 220-56-390.

**5. WAC 220-56-390 Squid, octopus**

- a. Added seven new areas in which it is unlawful to take octopus.
- b. Moved squid and octopus sections to this document; they were originally in WAC 220-56-310.

- c. Added new section (3) to differentiate between a violation that is an infraction and one that is a crime.
- d. Added new section (2)(a) to establish a daily limit of one octopus.

**C. Summary of comments and the department's response to and consideration of the comments:**

**OCTOPUS**

Written and verbal comments were obtained from the public.

Written comments:

- (1) The department's website allowed individuals to submit written comments on options A – D. More than 400 individuals commented between April 15 and May 31, 2013. The 400+ comments on the four options included a majority for options C and D. Following is a breakdown of the percentages in favor of the different options:
  - A. 14%
  - B. 6%
  - C. 31%
  - D. 49%

Verbal comments:

- (1) Two public informational meetings were held April 23 and April 24, 2013. The department's website included the date, time and location of the public informational meetings. The two meetings were attended by 43 individuals in Port Townsend and Seattle. The comments ranged from questions about harvest to enforcement to data.
- (2) Verbal comments were made at the commission's public hearing on June 7. One person commented in favor of option A.
- (3) Verbal comments were also made at the commission's public hearing on August 2. Two people testified in favor of protection for the giant Pacific octopus.

Written and verbal comments were incorporated into the descriptions of marine areas for closure. Comments were also considered by the commission in closing a fishery in spite of no evidence of a shortage of giant Pacific octopuses.

**CABEZON**(Proposal 65)

- (1) Written and verbal comments were obtained from the public at the February 2013 commission meeting.

Written Testimony (81 comments)

**Support:** Comments included: (a) provides some opportunity while still protecting the species; and (b) provide protection for rockfish, typically a bycatch in this fisher.

**Oppose:** Comments included: (a) no data to support this proposal; (b) rarely targeted, and few cabezon are caught; (c) this proposal will have negative impact on rockfish; (d) another rule

which decreases opportunity in Neah Bay; and (e) suggestion that the Cabezon minimum size be area specific, not all marine areas (i.e. not MA 4).

Public Hearing (3 comments)

Comments opposed proposal.

(2) There were 202 written comments submitted online and six comments presented at the commission's public hearing on June 7, 2013. The majority of written comments and all verbal testimony supported retaining the current rules. Written comments occurred from April 15 through May 31, 2013. On June 7, 2013, the commission voted to keep the current season in place and to not adopt a new cabezon season.

**SHARK** (Proposal 4)

Written and verbal comments were obtained from the public.

Written comments

**Support:** Comments recommended protection of all these species in all Washington waters.

**Oppose:** Most comments opposed. Comments included: (a) disagree specifically for thresher sharks; (b) this is premature as there is not data to support the rule; and (c) catch and release should be allowed.

Verbal comments

All comments opposed. Requests were made to allow catch and release fishery, require corrosive circle hooks, and require that fish remain in the water.

**LINGCOD**(Proposal 68)

Written and verbal comments were obtained from the public.

Written Testimony (93 comments)

**Support:** Comments included: (a) will allow someone to catch target sooner (so less bycatch); (b) very few are over 24" so increase in opportunity; and (c) benefits the rockfish.

**Oppose:** Most comments opposed. Comments included: (a) concern that 22" is too small, and (b) suggestion that instead of changing the minimum size, the daily limit be increased.

Public Hearing (5 comments)

All comments opposed proposal.

**ROCKFISH** (Proposal 66)

Written and verbal comments were obtained from the public.

Written Testimony (222 comments)

**Support:** Comment included support of good conservation move.

**Oppose:** Most comments opposed. Comments included: (a) concern there is not sufficient data to support this proposal; (b) 85% of the area is already under closure protection, and that this is unfair to small recreational boaters, and will have a negative impact on Neah Bay; (c) suggestion to not allow rockfish retention for five years instead of proposed rule; (d) suggest reduced size requirement and increased catch limit for lingcod instead (predator); (e) suggestion that the closure be area specific, not all marine areas (i.e. not MA 4); (f) will limit halibut catch; and (g) suggest daily limit and minimum size instead.

Public Hearing (9 comments)

Comments opposed proposal. A few people stated that this proposal will result in more time spent fishing, and so increase the bycatch and ESA impacts.

**SPOT SHRIMP** (Proposal 3)

Written and verbal comments were obtained from the public.

Written Testimony (109 comments)

**Support:** Most comments supported. Comments included: (a) this will provide economic benefit; (b) request to include all marine areas; (c) request to keep fishery open continuously for two weeks; (d) provides a new fishery as inside fishery maxes; and (e) current daily limit of 80 makes it cost prohibitive.

**Oppose:** Comments included: (a) 200 per person may not be enough, given the expense to travel to the fishing grounds; (b) concern for impact to gray whales who frequent these areas; (c) concern whether resource can handle the impact; (d) concern for tribes exercising their fishing rights and thus cut our quota at any time; (e) not traditionally recreational fishery in distant waters due to safety concerns, and this will encourage poorly equipped fishers to venture further out to sea; (f) potential gear conflicts with commercial prawn fishers; and (g) gives false impression that this is a lucrative fishery.

Public Hearing (2 comments)

Comments supported proposal.